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No. 07-___

IN THE

Supreme Court of the United States

EXPERIENCE HENDRIX AND AUTHENTIC HENDRIX,
Petitioners,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the Ninth Circuit Court of Appeals incorrectly apply choice of law analysis by using the choice of law rules of a state other than the forum state?

Did the Ninth Circuit Court of Appeals incorrectly hold that the Washington Personality Rights Act does not contain a statutory directive on choice of law?

CORPORATE DISCLOSURE STATEMENT

Petitioners Experience Hendrix, L.L.C. and Authentic Hendrix, LLC are both limited liability corporations. Authentic Hendrix is fully owned by Experience Hendrix. Experience Hendrix has no parent corporation and is not owned in whole or part by any publicly held corporation.

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OPINIONS BELOW

All orders and opinions were unreported. The opinion and order of the United States Court for the Western District of Washington granting partial summary judgment appears at App. 1a-11a. The opinion of the United States Court of Appeals for the Ninth Circuit affirming the District Court appears at App. 29a-31a. The order denying reconsideration en banc appears at App. 40a.

JURISDICTION

The District Court had original jurisdiction under 28 U.S.C. §§ 1331 and 1138 over claims that included Federal Trademark Infringement (15 U.S.C. §§ 1114(1)

and 1125(d)), Contributory Trademark Infringement (15 U.S.C. § 1117), Trademark Dilution (15 U.S.C. §§ 1125(c)(2) and 1117), and False Designation of Origin (15 U.S.C. § 1117) and 1338 and 1367(a). The District Court had supplemental jurisdiction over the Washington Personality Rights Act[1] claim under 28 U.S.C. § 1367. The District Court entered final judgment dismissing the Washington Personality Rights Act claim with prejudice on September 16, 2005. (App. 41a). The Court of Appeals affirmed the District Court's judgment dismissing Petitioners' claims under the Washington Personality Rights act on June 18, 2007. (App. 29a-31a).

Petitioners filed their Notice of Appeal October 14, 2005. (App. 56a-58a). After a supplemental judgment was awarded that included prevailing party attorneys fees on November 7, 2005 (App. 42a), Petitioners filed an amended Notice of Appeal on November 21, 2005. (App. 59a-60a). The Court of Appeals had jurisdiction under 28 U.S.C. § 1291 to review the District Court's final judgment dismissing the Washington Personality Rights Act claim and the award of prevailing party attorneys fees under that statute. The Court of Appeals affirmed the dismissal, and Petitioners' Petition for Rehearing En Banc was denied July 27, 2007. (App. 40a).

This Court has jurisdiction to hear the appeal under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Washington Personality Rights Act appears at RCW 60.63.010 *et seq.* The full statute appears

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[1] RCW 60.63.010 *et seq.*

in the appendix. (App. 43a-55a). The specific statutory provision at issue in this matter is RCW 63.60.030(1)(a):

> (1) Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer, and shall not expire upon the death of the individual or personality, as the case may be, so protected but shall pass:
>
> (a) Under the deceased individual's or personality's, as the case may be, last will and testament or, if none, then under the laws of intestate succession applicable to interests in intangible personal property of the individual's or personality's, as the case may be, domicile;

The Court of Appeals incorrectly held that the following language from that section did not constitute a "statutory directive" on choice of law under Restatement (Second) of Conflicts of Law (1971)

> Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right . . . shall not expire upon the death of the individual or personality . . . but shall pass . . . under the laws of intestate succession applicable to interests in intangible personal property of the individual's or personality's . . . domicile.

STATEMENT OF THE CASE

Factual Background

Jimi Hendrix was born and raised in Washington and eventually became a famous musician and guitar

player. (App. 65a). His career hit its apex in the late 1960's, and he died suddenly in 1970 at the age of 27 in London, England. (App. 66a). His estate was probated in New York, as that was the place of his domicile at the time of his death. His sole beneficiary was his father, Al Hendrix, a Washington resident. (App. 66a). The final Distribution of Assets and Liabilities of the Jimi Hendrix estate was signed on March 30, 1977, and Al received all of Jimi's property and liabilities. (App. 90a-99a). Al remained a Washington resident until his death in 2002. (App. 66a).

During his lifetime, Jimi used and licensed his name, likeness, and image ("publicity rights") on products and goods including books and posters. (App. 65a-66a, 77a-89a). Together with his management company, he pursued civil actions under the federal Lanham Act and New York State privacy laws for protection of his rights in his name. (App. 65a).

After Jimi's death, Al and his agents continued to use and license others to use Jimi's publicity rights on products of many varieties, sold to the public worldwide. Al and his agents and licensees engaged in significant enforcement measures to prevent unauthorized uses of the rights. (App. 66a-70a, 100a-202a).

In 1995, Al Hendrix settled a heavily-litigated dispute with his former attorney and offshore companies claiming rights in Jimi's music and related assets. (App. 70a). He then set up domestic companies to manage these assets, including Authentic Hendrix, LLC, a California limited liability company, which took ownership of the publicity rights and managed their use by and licensing to third parties. (App. 70a-71a, 203a-223a). In 1998, Authentic Hendrix, LLC

(California) was merged into Authentic Hendrix, LLC (Washington) (herein "Authentic"), a new company formed in Washington to manage and license the same rights. (App. 72a). Both companies have engaged in significant enforcement measures to control unauthorized uses of the rights. (App. 72a).

Both Authentic companies have used and licensed or authorized others to use Jimi's publicity rights in connection with a wide variety of goods and services, from 1996 to the present. Authentic has a mail order catalog business and an active website from which customers can order Hendrix products. (App. 71a-72a, 224a-253a).

In the fall of 2003, the James Marshall Hendrix Foundation (herein "Foundation"), which has no connection with Authentic or the other Al Hendrix family companies, began to promote itself and an alleged fundraising event in Seattle, Washington using the properties of Petitioners. (App. 2a-3a). Authentic filed suit to prevent infringement of its intellectual property rights, including rights under the Washington Personality Rights Act ("WPRA").[2]

Procedural Background

Authentic filed suit against Foundation in the United States Court for the Western District of Washington. The District Court had original jurisdiction under 28 U.S.C. §§ 1331 and 1138 over claims that included Federal Trademark Infringement (15 U.S.C. §§ 1114(1) and 1125(d)), Contributory Trademark Infringement (15 U.S.C. § 1117), Trademark Dilution (15 U.S.C. §§ 1125(c)(2) and 1117), and False Designation of Origin (15 U.S.C. § 1117). The District

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[2] RCW 60.63.010 *et seq.*

Court had jurisdiction over the Washington Personality Rights Act claim under 28 U.S.C. § 1367.

Foundation moved for partial summary judgment on the WPRA claim, arguing that Washington's choice of law rules required the court to apply New York law to the issue of whether Jimi's personality rights descended to his father. The District Court granted the motion, dismissing the WPRA claim. (App. 1a-11a). After all other claims and counterclaims were dismissed (App. 34a-39a), the court entered judgment dismissing the WPRA claim. (App. 41a).

Authentic timely filed a notice of appeal. (App. 56a-58a). After the District Court entered a judgment for prevailing party attorneys fees (App. 42a), Authentic filed an amended notice of appeal. (App. 59a-62a).

The United States Court of Appeals for the Ninth Circuit affirmed. (App. 29a-30a). Authentic's Petition for Reconsideration En Banc was denied July 27, 2007. (App. 40a).

REASONS FOR GRANTING THE PETITION

Because this lawsuit was filed in Washington, the United States courts are required to apply Washington's rules governing choice of law. Washington's choice of law rules require the court to follow a "statutory directive" on choice of law if one exists and can be applied constitutionally. In determining whether the Washington Personality Rights Act contains a statutory directive, the Ninth Circuit Court of Appeals applied California rather than Washington law. As a result, the Ninth Circuit erroneously held that a "statutory directive" requires either an express choice of law provision or legislative history that expressly indicates the legislature's intent to apply

the WPRA to people domiciled in other states at the time of death. Under Washington law, interpretation and construction of the statute itself must be conducted to determine whether the legislature intended the statute to apply to the out of state facts presented. In conflict with Washington law, the Ninth Circuit failed to consider the language of the statute itself, which clearly demonstrates the legislature's intent to apply the statute to persons domiciled in another state at the time of death. The effect of the Ninth Circuit's decision is to strike down a portion of a Washington statute under the guise of an erroneous choice of law analysis. This Court should grant the petition to avoid application of a choice of law analysis that conflicts with decisions of this Court and other Courts of Appeal and to permit the WPRA to be enforced as intended by the Washington legislature.

I. Under Washington Choice of Law Rules, the Court Must Follow a Statutory Directive of the Washington Legislature on Choice of Law.

The Ninth Circuit's opinion correctly recites the rule that the choice of law rules of the forum state must be followed. (App. 30a).[3] The Ninth Circuit also recognized that Washington follows the Restatement (Second) of Conflicts of Law (1971) ("Restatement").

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[3] Just as with diversity jurisdiction, a federal court exercising supplemental jurisdiction over a state law claim applies the choice of law rules of the forum state. *Bass v. First Pacific Networks, Inc.*, 219 F.3d 1052, 1055 n.2 (9th Cir. 2000); *Mangold v. California Public Utilities Com'n*, 67 F.3d 1470, 1478 (9th Cir. 1995) ("The *Erie* principles apply equally in the context of pendent jurisdiction.").

(App. 30a).[4] Restatement § 6 provides the controlling rule:

> (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
>
> (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include
>
> (a) the needs of the interstate and international systems,
>
> (b) the relevant policies of the forum,
>
> (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
>
> (d) the protection of justified expectations,
>
> (e) the basic policies underlying the particular field of law,
>
> (f) certainty, predictability and uniformity of result, and
>
> (g) ease in the determination and application of the law to be applied.

Washington courts follow the analysis prescribed in Section 6. For example, in *Marriage of Abel*, a Washington court was asked to decide whether to calculate child support using Washington or Montana child support schedules. The Court of Appeals required use of the Washington schedule:

> Restatement (Second) of Conflict of Laws § 6(1) (1971) provides that "[a] court, subject to con-

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[4] *Johnson v. Spider Staging Corp.*, 555 P.2d 997, 1000 (Wash. 1976). *See Baffin Land Corp. v. Monticello Motor Inn, Inc.*, 425 P.2d 623 (Wash. 1967).

> stitutional restrictions, will follow a statutory directive of its own state on choice of law." Washington has such a statutory directive. RCW 26.19.035(1) reads: "The child support schedule *shall* be applied: . . . (c) In all proceedings in which child support is determined or modified". (Italics ours.)[5]

Thus, if there is a statutory directive under Subsection (1) that can be constitutionally enforced, Washington law requires the court to enforce the statute; the balancing of interest test in §6(2) is never reached.[6]

II. RCW 63.60.030(1) is a Statutory Directive Under Restatement §6(1) Because It Expressly States How Personality Rights Descend When A Non-Washington Resident Dies.

The comments to Restatement § 6 (1) recognize that most statutes do not contain an express choice of law clause.

> A court will rarely find that a question of choice of law is explicitly covered by statute. That is to say, a court will rarely be directed by statute to apply the local law of one state, rather than the local law of another state, in the decision of a particular issue.[7]

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[5] *In re Marriage of Abel*, 886 P.2d 1139, 1141 (Wash. App. 1995).

[6] The Court of Appeals in *Marriage of Abel* did perform the balancing analysis under subsection (2), but prefaced it by stating: "Even if we did not interpret RCW 26.19.035(1) as a statutory directive . . ." *Id.*

[7] Restatement §6(1), comment b.

For that reason, the Restatement does not limit the term "statutory directive" to an express choice of law provision. Rather, the "statutory directive" requirement is met if the legislature intended the statute to apply to the out of state facts involved.

> The court should give a local statute the range of application intended by the legislature when these intentions can be ascertained and can constitutionally be given effect.[8] If the legislature intended that the statute should be applied to the out-of-state facts involved, the court should so apply it unless constitutional considerations forbid. . . . When the statute is silent as to its range of application, the intentions of the legislature on the subject can sometimes be ascertained by a process of interpretation and construction. Provided that it is constitutional to do so, the court will apply a local statute in the manner intended by the legislature even when the local law of another state would be applicable under usual choice-of-law principles.[9]

Washington follows the analysis set out in comment b. In *Marriage of Abel*, the Washington statute had no express choice of law clause. Nevertheless, the court found the simple phrase "the child support schedule *shall* be applied" to be a "statutory directive" under Restatement §6(1) because the language

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[8] The Court of Appeals did not limit the reach of the Washington Personality Rights Act based on constitutional considerations. The constitution does not prohibit applying Washington law to a dispute between Washington residents over acts occurring in Washington. *See Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981); *Franchise Tax Board v. Hyatt*, 538 U.S. 488 (2003). Nevertheless, the constitutionality of the WPRA is an issue that should be remanded for consideration by the Ninth Circuit.

[9] Restatement §6, comment b.

demonstrated the legislature's intent to apply the statute to the relevant out-of-state facts.[10]

This case involves a dispute between two Washington residents over acts that occurred entirely in Washington. The only out-of-state fact involved is that Jimi Hendrix resided in New York when he died. If the Washington legislature intended the WPRA to grant its statutorily created property right to residents of other states and to determine whether and how the right would descend upon the death of nonresidents, then the WPRA contains a statutory directive on choice of law under Restatement §6(1) and the WPRA must be applied.

In the WPRA, the Washington legislature created an intangible property right in ***every*** individual or personality:

> Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness . . . .[11]

Although the WPRA recognizes personality rights in all individuals or personalities, without limitation, it protects only against infringements that occur in the State of Washington.[12]

The WPRA defines this intangible property right as freely transferable, assignable, licensable, and heritable.[13] The Washington legislature specifically declared: "The property right does not expire upon the

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[10] *Abel*, 886 P.2d at 1141.

[11] RCW 63.60.010.

[12] RCW 63.60.050.

[13] *Id.*

death of the individual or personality, as the case may be."[14]

The WPRA specifically extends this intangible property right to deceased personalities, defined as:

> (1) "Deceased personality" means any individual whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of, products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998.[15]

Thus, the Washington legislature intended the WPRA to apply to any deceased personality who died within fifty years prior to its enactment. The Foundation has never disputed that Jimi Hendrix is a deceased personality under the statute or that the Washington legislature intended to extend personality rights to non-residents of Washington.

The WPRA not only states that the right does not expire upon death of a personality, it states how and to whom the right passes at death, meaning the class of successors to such rights now enforceable by statute in Washington. More importantly, it specifically addresses how and to whom the right passes when a non-resident of Washington dies intestate:

> (1) Every individual or personality, as the case may be, has a property right in the use of his

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[14] *Id.*

[15] RCW 63.60.020(1).

> or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer, and shall not expire upon the death of the individual or personality, as the case may be, so protected but shall pass:
>
> (a) Under the deceased individual's or personality's, as the case may be, last will and testament or, if none, then under the laws of intestate succession applicable to interests in intangible personal property of the individual's or personality's, as the case may be, domicile.[16]

Had the Washington legislature intended the WPRA to apply only to Washington residents, there would be no need to refer to the state where the deceased person was domiciled. Thus, the text of the WPRA itself expressly addresses the exact situation presented in this case: Jimi Hendrix's death while domiciled in New York. The WPRA expressly states that, when a non-resident of Washington dies, the statutory, intangible property right of personality "shall not expire," but "shall pass" to the person who would receive other intangible property rights under the law where the person resided.[17] There is no dispute that Al Hendrix was Jimi's sole heir, entitled to receive all tangible and intangible property under New York law.

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[16] RCW 63.60.030(1). The WPRA specifies that it applies to any person who died after January 1, 1948 and, for personalities like Jimi, lasts for 75 years. RCW 63.60.020.

[17] Had the Washington legislature wished to apply the law of the domicile state applicable specifically to "personality rights," it would have said so. Instead, it refers to the law pertaining to intangible property rights in general.

The WPRA makes no exception for individuals or personalities who die in states that do not recognize a right of personality. It does not incorporate any other states' treatment of personality rights. Instead, by its language, the WPRA grants a *new*, independent right of publicity to protect the name, likeness, image and similar indicia of personality of "all" persons and protects that right from infringement in Washington.

If the clause "the child support schedule *shall* be applied" is sufficient to constitute a "statutory directive" on choice of law in Washington, the more extensive and specific terms of the WPRA must also constitute a statutory directive. Because the language of the WPRA unequivocally demonstrates the legislature's intent to apply the WPRA to the only out of state facts in this case, the Act contains a statutory directive on choice of law under Restatement §6(1). As a result, the Washington statute must be applied, and the multi-factor balancing test under §6(2) does not apply.[18] The Court of Appeals erred by failing to find that the WPRA contains a statutory directive on choice of law.

III. In Failing to Consider the Language of the WPRA, the Ninth Circuit Applied California Rather Than Washington Law

The Ninth Circuit held that a conflict existed between Washington law and New York law because personality rights under the WPRA survive death,

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[18] Likewise, the statutory directive in the Act supercedes any otherwise applicable choice of law rule such as Restatement § 260: "[T]he court will apply a local statute in the manner intended by the legislature even when the local law of another state would be applicable under usual choice-of-law principles." Restatement § 6(1) comment b.

while they do not under applicable New York law. Because it found no statutory directive on choice of law in the WPRA, it proceeded to apply the multi-factor analysis of Restatement § 6(2) and held that New York law applied.[19]

The Panel's entire analysis of whether the Act contains a statutory directive on choice of law consists of a single sentence:

> The WPRA does not contain a statutory directive to apply Washington law to this case because it does not include a choice of law provision nor does the legislative history expressly indicate an intent that the WPRA apply to out-of-state facts. *See* Restatement (Second) of Conflict of Laws § 6(1) cmts. a-b (1971); *see also Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1147-49 (9th Cir 2002).

(App. 30a.)

As discussed above, neither the Restatement nor Washington case law requires a "choice of law provision." Nor do they require supporting legislative history. What they do require is an examination of the statutory language itself to determine whether the Washington legislature intended the WPRA to apply to whether and how the right of personality it created descends upon the death of a non-resident. As discussed above, the WPRA expressly addresses this very issue in its text. The Ninth Circuit erred by failing to address the statute at all.

The sole case authority cited to support the Ninth Circuit's statutory directive analysis is *Cairns v.*

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[19] Authentic does not seek review of the Court of Appeals' interpretation of New York law or its analysis under Restatement § 6(2).

Franklin Mint Co.[20] – a published decision of the Ninth Circuit applying California choice of law rules. *Cairns* involved reconciliation of two California statutes: a personality rights statute and a presumptive choice of law statute. It did not involve or even address the meaning of "statutory directive" in Restatement § 6(1).[21]

Cairns held that, because California's personality rights act lacked a choice of law provision and the legislature had expressly rejected adding such a provision to the statute, the personality rights statute did not overcome the presumptive statute. By finding that the WPRA lacked a statutory directive because it lacked a choice of law provision and had no supporting legislative history, the Ninth Circuit substituted California's choice of law rules for Washington's. The Ninth Circuit erred by failing to apply Washington's choice of law rules. That error led the Ninth Circuit to fail to consider the primary evidence of the Washington's legislature's intent: the language of the WPRA itself.

IV. The Ninth Circuit's Substitution of California's Choice of Law Analysis for Washington's Conflicts With Decisions of this Court and of Other Courts of Appeals.

Both this Court and the other Courts of Appeals have held that federal courts must apply the choice of

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[20] *Cairns v. Franklin Mint Co.*, 292 F.3d 1139 (9th Cir. 2002).

[21] California does not follow the Restatement for choice of law analysis. *Hurtado v. Superior Court*, 522 P.2d 666, 669 (Cal. 1974).

law rules of the forum state.[22] In this case, Washington is the forum state. By enforcing the *Cairns* requirements of an express choice of law provision or legislative history, the Ninth Circuit substituted California's choice of law rules for Washington's. Washington's choice of law rules require the court to consider the WPRA's language to determine whether it includes a statutory directive on choice of law. This Court should correct the Court of Appeals' clear departure from long-settled choice of law principles.

V. The Partial Invalidation of the WPRA is a Substantial Departure From the Accepted and Usual Course of Judicial Proceedings

The Ninth Circuit's decision reaches far beyond Authentic's claims in this case. The WPRA contains express provisions that govern whether, how, and to whom its statutory personality rights pass when a person domiciled in another state dies. The effect of the Ninth Circuit's decision is to strike these provisions out of the statute; in no case can they ever apply to the set of facts they specifically address.

The Ninth Circuit found no defect in the WPRA itself that would provide it with authority to strike parts of the statute down. It did not hold that it

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[22] *Klaxon Co. v. Stentor Electric Manufacturing Co.*, 313 U.S. 487 (1941) (diversity jurisdiction); *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) (federal court exercising pendent jurisdiction over state law claims must apply substantive law of state in which it sits); *Mangold*, 67 F.3d at 1478 ("The *Erie* principles apply equally in the context of pendent jurisdiction."); *Bass*, 219 F.3d at 1055 n.2 (federal court exercising pendent jurisdiction must apply forum state's choice of law rules).

could not constitutionally apply the WPRA to this dispute between Washington residents concerning acts of infringement that occurred in Washington. Rather, by applying the California choice of law rules from *Cairns*, the Ninth Circuit effectively struck down those portions of the WPRA by the simple act of refusing to read them. This Court should exercise its supervisory power to ensure that a duly enacted state statute is not partially struck down in the guise of an erroneous choice of law analysis.

CONCLUSION

The Ninth Circuit Court of Appeals failed to apply the correct state's choice of law analysis. That failure conflicts with decisions of this Court as well as with authoritative decisions of other courts of appeals. Because it applied California's choice of law analysis rather than Washington's, the Ninth Circuit failed to consider the most significant evidence of whether the Washington legislature intended the Washington Personality Rights Act apply to personalities who are out of state residents when they die: the language of the statute itself. National uniformity in choice of law rules when federal courts exercise jurisdiction over state claims is of overriding importance.

This Court should also consider the effect of the Ninth Circuit's decision on property rights created by a state legislature. Despite express provisions governing whether, how, and to whom the intangible property right created by the statute passes when a non-resident dies, the decision precludes those provisions from ever applying in any case. In essence, the Ninth Circuit has stripped the property right created by the Washington legislature from those intended to possess it. It does so, not because it finds any flaw in

the statute, but because it simply fails to look at what the statute actually says. This Court should not permit the Ninth Circuit to strike down portions of a state statute and destroy property rights *sub silentio* under the guise of a fundamentally flawed choice of law analysis.[23]

Respectfully submitted,

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October 25, 2007

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[23] The Ninth Circuit also awarded prevailing party attorneys fees under the WPRA. (App. 32a-33a). If this Court grants the petition and reverses the Ninth Circuit, it should also reverse the award of attorneys fees.

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C03-3462Z

EXPERIENCE HENDRIX, L.L.C., a Washington limited liability company; AUTHENTIC HENDRIX, LLC, a Washington limited liability company,

Plaintiffs,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington non-profit corporation a/k/a THE JIMI HENDRIX FOUNDATION; LEON HENDRIX, an individual; KENNETH D. HAGOOD, an individual; PETE SIKOV, an individual; DIANE HENDRIX, an individual; TUNDE RA ALEEM, an individual; TAHARQA ALEEM, an individual,

Defendants.

ORDER

INTRODUCTION

This case comes before the Court on the Defendant's motion for partial summary judgment, docket no. 41. The Court, having fully considered all of the papers submitted in connection with the motion, hereby GRANTS Defendant's motion for partial summary judgment and dismisses the Plaintiffs' right of publicity claim.

BACKGROUND

James Marshall Hendrix ("Jimi Hendrix") was a famous rock guitarist who died intestate in 1970, in London, England. Wasson Decl., docket no. 45, Ex. 1; Nelson Affidavit, docket no. 42, Ex. B (File no. 5670, Surrogate's Court of the County of New York, 1970). Jimi Hendrix was domiciled in New York at the time of his death, his estate was probated in New York, and his father James A. Hendrix ("Al Hendrix") was the sole heir to the estate. *Id.* Experience Hendrix, LLC and Authentic Hendrix, LLC ("Plaintiffs") were established and incorporated by Al Hendrix before his death in 2002 and are currently under common control and ownership by family members of the late Jimi Hendrix. Complaint, docket no. 1, ¶ 6. Plaintiffs claim that Al Hendrix assigned his rights personally and as sole heir to the estate of Jimi Hendrix to Plaintiffs by written agreements in 1995. *Id.* at ¶ 7. Plaintiffs now claim that they are the sole owners of substantially "all of the rights in Jimi Hendrix's music, name, trademarks, copyrights . . . likeness, image, photograph, signature, voice and other personal rights." *Id.* at ¶¶ 6, 7. Plaintiff Authentic Hendrix has registered Jimi Hendrix's right of publicity in several states. Wasson Decl., docket no. 45, ¶¶ 24, 28-32, 38-41; Ex. 17, 19-24, 28-31.

The James Marshall Hendrix Foundation ("the Foundation") is a non profit organization run by Leon Hendrix, Jimi Hendrix's brother, whose mission is to help disadvantaged children from the same Seattle neighborhoods where Jimi Hendrix was raised. Complaint, docket no. 1, Ex. 1, p. 3, p. 5. In November, 2003, Plaintiffs discovered that the Foundation was promoting its own purposes and a specific event entitled the "James Marshall Hendrix Awards Cere-

mony" or the "Jimi Awards" at a fund raising event to be held on November 22, 2003. *Id.* at ¶ 9; Ex. 1, p. 4. Plaintiffs filed this action against the Foundation claiming, among other things, violations of the Washington Personality Rights Act, Wash. Rev. Code § 63.60.010. *Id.* at ¶¶ 46-49.

DISCUSSION

I. *Standard of Review*

Defendant moves for partial summary judgment to dismiss the Plaintiffs' sixth claim for relief alleging violations of Washington's Personality Rights Act. The substance of Defendant's motion is that Plaintiffs have no claim for infringement of Jimi Hendrix's right of publicity because no such right survived Jimi Hendrix's death and descended to Al Hendrix.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court concludes that the central question in this matter is a legal one: whether a right of publicity descended to Al Hendrix after Jimi Hendrix's death. The parties dispute whether New York or Washington law should govern in deciding this issue.

II. *Choice of Law Principles*

When presented with a dispute over the choice of law, a federal court applies the choice of law rules of the forum state. *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496-97 (1941). Therefore, this Court applies Washington's choice of law rules. When the parties dispute choice of law, there must be an

actual conflict between the laws or interests of Washington and another state before Washington courts will engage in a conflict of laws analysis. *Burnside v. Simpson Paper Co.*, 123 Wash.2d 93, 100-01 (1994). When the result of the legal analysis is different under the law of the two states, there is a "real" conflict. *Seizer v. Sessions*, 132 Wash.2d 642, 648 (1997). The situation where laws or interests of concerned states are not incompatible is known as a "false" conflict and the presumptive local law is applied. *Id.* at 648-49. If an actual conflict exists with regard to a property claim, Washington courts apply the "most significant relationship" test. *See* Restatement (Second) Conflict of Laws § 222 (1971); *Seizer*, 132 Wash.2d at 650. Washington courts generally follow the approach outlined in the Restatement (Second) of Conflict of Laws § 6(2) (1971). *See id.* at 651-57 (applying § 6).

III. *This Court's Previous Choice of Law Decision With Regards to Jimi Hendrix's Right of Publicity*

There was prior litigation in this Court involving the intellectual property rights of Jimi Hendrix's musical works and right of publicity. *See Hendrix v. Branton*, Case No. C93-537Z (W.D. Wash. 1995); found at Nelson Affidavit, docket no. 42, Ex. C (Order Regarding Choice of Law Issues). In that case, this Court determined that under general choice of law principles, New York law governed whether Jimi Hendrix had a right of publicity at the time of his death and whether that right, if it existed, descended to Jimi's father. *Id.* at 10-12. A final ruling on whether, under New York law, the claimed right of publicity existed was deferred and this Court also deferred ruling as to which state's law would govern

the infringement claim if a right of publicity in fact existed. *Id.* at 11-12. The case was ultimately settled before trial and the issue of whether a right of publicity existed and descended under New York law in 1970 was never decided.

In determining that New York law governed, this Court followed the general rule applied by Washington courts that the law of the state where the decedent was domiciled at death governs whether such a property right exists and descends. *See* Restatement (Second) Conflict of Laws § 260 (1971); *see also Joplin Enterprises v. Allen*, 795 F. Supp. 349, 350 (W.D. Wash. 1992) (finding that the law of the state of domicile at time of death would determine whether the allegedly infringed property right existed at all and descended); *In re Grady's Estate*, 79 Wash.2d 41, 43 (1971) (finding that personal property has its situs at the domicile of the owner); *In re Eilermann's Estate*, 179 Wash. 15, 18 (1934) (observing that Washington courts had consistently held that the situs of intangible property is at all times at the domicile of the owner).

Plaintiffs have asked this Court to reconsider its previous choice of law decision. The Court once again concludes that New York law governs whether a right of publicity descended to Al Hendrix. As stated previously, the right of publicity constitutes a property right. *See Joplin*, 795 F. Supp. at 350. "Whether or not a right of such a nature exists is a question of personal property law." *Hendrix*, Case No. C93-537Z, Order Regarding Choice of Law Issues, docket no. 1551, at 11; *see also Acme Circus Operating Co. v. Kuperstock*, 711 F. 2d 1538, 1541 (11th Cir. 1983). Under general choice of law principles, the Court looks to the law of New York, where Jimi Hendrix

was domiciled at the time of his death, to determine whether the right existed. *Joplin*, 795 F.Supp. at 350. Under New York law, it is the law at the time of death that determines what property is in the estate and whether it passes to descendants. *People v. Powers*, 147 N.Y. 104, 109 (N.Y. 1895). Thus, the Court concludes that it is New York law at the time of Jimi Hendrix's death in 1970 that governs whether Jimi Hendrix had a right of publicity, and whether that right, if it existed, descended to Al Hendrix.

IV. *Existence and Descendibility of a "Right of Publicity" under New York Law in 1970*

Prior to 1970 and up to present time, New York has recognized a statutory "right to privacy" for living persons that provides for civil damages under certain circumstances when the right to privacy is infringed. *See* N.Y. Civ. Rights Law § 50 (McKinney 2005) (providing that "[a] person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person . . . is guilty of a misdemeanor."[1]); *see also* N.Y. Civ. Rights Law § 51 (McKinney 2005). This statutory right to privacy has been consistently construed as being limited on its face to living people; accordingly, any rights provided by the statute have been construed as dying with the person. *Pirone v. MacMillan, Inc.*, 894 F.2d 579, 586 (2d Cir. 1990).

Prior to Jimi Hendrix's death in 1970, some New York state court decisions seemed to recognize a separate common law "right of publicity" distinct

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[1] This portion of N.Y. Civ. Rights Law § 50 was last amended in 1909.

from this statutory right to privacy. *See, e.g., Madison Square Garden Corp. v. Universal Pictures Co.*, 7 N.Y.S.2d 845, 850-52 (App. Div. 1938) (finding that the plaintiff corporation clearly had a property right in its good name, its reputation and its good will in an action brought in equity for unfair competition). In 1953, the Second Circuit Court of Appeals sitting in diversity recognized a New York common law right of publicity separate from the New York statutory right of privacy. *See Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866, 868 (2d Cir. 1953).

> We think that, in addition to and independent of that right of privacy (which in New York derives from statute), a man has a right in the publicity value of his photograph . . . Whether it be labeled a 'property' right is immaterial; for here, as often elsewhere, the tag 'property' simply symbolizes the fact that courts enforce a claim which has pecuniary worth. This right might be called a 'right of publicity.' . . . We think the New York decisions recognize such a right.

Id. at 868 (internal citations omitted).

In this case, Plaintiffs argue that the law that actually existed at the time of Jimi Hendrix's death was the rule established in *Haelan* which provided for a descendible common law right of publicity separate and apart from the statutory right to privacy. *Id.* However, this Court is persuaded that the holding in *Haelan* did not correctly interpret New York law. The "ultimate source for state law adjudication in diversity cases is the law as established by the constitution, statutes, or authoritative court decisions of the state." *See Factors Etc., Inc. et al. v. Pro Arts, Inc.*, 652 F.2d 278, 283 (2d Cir. 1981). New

York State courts, up to and including the time of Jimi Hendrix's death, continued to assert that any proprietary right of publicity was limited to the statutory right to privacy applicable only to living persons. *See, e.g., Flores v. Mosler Safe Co.*, 7 N.Y.2d 276, 280 (N.Y. 1959) (recognizing a right to privacy rested solely in and limited to the statutory right (citing *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538 (N.Y. 1902))); *Spahn v. Julian Messner, Inc.*, 250 N.Y.S.2d 529, 531-32 (N.Y. Sup. Ct. 1964), *aff'd*, 260 N.Y.S.2d 451 (N.Y. App. Div. 1965), *aff'd*, 18 N.Y.2d 324 (N.Y. 1966), *vacated*, 387 U.S. 239 (1967), *reargued*, 21 N.Y.2d 124 (N.Y. 1967), *appeal dismissed*, 393 U.S. 1046 (1969) (stating that New York law recognizes Article 5 of the Civil Rights Law as the fountainhead of the right to legal redress for the invasion, appropriation and commercial exploitation of the individual's personality); *Rosemont Enterprises, Inc. v. Random House, Inc.*, 294 N.Y.S.2d 122, 129 (N.Y. Sup. Ct. 1968), *aff'd*, 301 N.Y.S.2d 948 (N.Y. App. Div. 1969) (differentiating between a right to privacy cause of action and a right of publicity cause of action but analyzing both within the scope of the statute as to when a wrong against the right is actionable).

In addition, in 1984, the New York Court of Appeals decided *Stephano v. News Group Publications, Inc.*, 64 N.Y.2d 174 (N.Y. 1984) and stated that "[s]ince the 'right of publicity' is encompassed under the Civil Rights Law as an aspect of the right of privacy, which, as noted, is exclusively statutory in this state, the plaintiff cannot claim an independent common-law right of publicity." *Id.* at 183. The Second Circuit Court of Appeals relied on the *Stephano* decision in a later right of publicity case and found that the Civil Rights Law and its right to

privacy preempted any common law right of publicity action by a celebrity's heirs. *Pirone*, 894 F.2d at 586. Following these decisions, New York courts have consistently refused to recognize claims made by celebrities' heirs for violations of a common law right of publicity. *See, e.g., James v. Delilah Films, Inc.*, 544 N.Y.S.2d 447, 450 (N.Y. Sup. Ct. 1987); *Antonetty v. Cuomo*, 502 N.Y.S.2d 902, 906 (N.Y. Sup. Ct. 1986). For these reasons, the Court finds that New York's Civil Rights Law and its statutory right to privacy preempt any common law right of publicity action and concludes that no right of publicity descended to Al Hendrix in 1970.

V. *The Washington Personality Rights Act*

In 1998, the Washington Legislature passed the Washington Personality Rights Act ("the Act"), Wash. Rev. Code § 63.60.030, which provides that:

> Every individual or personality . . . has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer, and shall not expire upon the death of the individual or personality . . . but shall pass: (a) Under the deceased individual's or personality's . . . last will and testament or, if none, then under the laws of intestate succession applicable to interests in intangible personal property of the individual's . . . domicile . . .

Wash. Rev. Code § 63.60.030. The Act defines a "deceased personality" as: "any individual whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death . . . [and] includes, without limitation, any such indi-

vidual who has died within fifty years before January 1, 1998." Wash. Rev. Code § 63.60.020. The parties do not dispute that Jimi Hendrix would fall under the statute's definition of a deceased personality because his name, voice, signature, photograph, or likeness clearly had commercial value at the time of his death. *See* Defendant's Motion for Partial Summary Judgment, docket no. 41, p. 2, ln. 9; Plaintiffs' Response Brief, docket no. 44, p. 15, lns. 10-11. Plaintiffs argue that the Act should apply in this case and that under the Act, a right of publicity descended to Al Hendrix upon Jimi Hendrix's death.

The Court concludes that the Act is not applicable in this case. Because the Act does not contain on its face an express choice of law provision, the Act is not a statutory directive as to the choice of law to be applied in a right of publicity case. *See* Restatement (Second) of Conflict of Laws § 6(1) (1971); *see also Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1146-49 (9th Cir. 2002). In addition, Jimi Hendrix was domiciled in New York at the time of his death and New York clearly has a greater interest in what property rights it chooses to recognize in its domiciliaries. Accordingly, Washington does not have such a dominant interest in solving the problem presented by this case that the Court should ignore the traditional choice of law principles and apply the Washington statute. *See Matter of Estate of Cook*, 40 Wash.App. 326, 329 (1985). Finally, after weighing the most significant relationship factors to determine if the Act changes its original choice of law analysis, this Court concludes that New York has the most significant relationship to the issue presented here; whether an intangible personal property right existed and descended in a New York domicilary in 1970. *See* Restatement (Second) of Conflict of Laws § 6(2)

(1971). Washington courts have repeatedly recognized the significant relationship a state has to issues regarding the descent of personal property in repeatedly following the traditional rule that the law governing a personalty, even an intangible personalty, is the law of the state where the person is domiciled. *See, e.g., Joplin*, 795 F.Supp. at 350; *In re Grady's Estate*, 79 Wash.2d at 41; *In re Eilermann's Estate*, 179 Wash. at 18.

CONCLUSION

Based on the foregoing, the Court GRANTS the Defendant's motion for partial summary judgment, docket no. 41, and dismisses the Plaintiffs' sixth claim for relief in this action.

IT IS SO ORDERED.

DATED this 15th day of April, 2005.

/s/ Thomas S. Zilly
THOMAS S. ZILLY
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C03-3462Z

EXPERIENCE HENDRIX, L.L.C., a Washington limited liability company; AUTHENTIC HENDRIX, LLC, a Washington limited liability company,

Plaintiffs,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington non-profit corporation a/k/a THE JIMI HENDRIX FOUNDATION; LEON HENDRIX, an individual; KENNETH D. HAGOOD, an individual; PETE SIKOV, an individual; DIANE HENDRIX, an individual; TUNDE RA ALEEM, an individual; TAHARQA ALEEM, an individual,

Defendants.

ORDER

This matter comes before the Court on Defendants' Motion for Attorney's Fees and Costs, docket no. 62, and Plaintiffs' Surreply Requesting the Court to Strike Certain Materials Filed with Defendants' Reply and Portions of Defendants' Reply Brief, docket no. 85. Having considered the briefs and declarations in support of and in opposition to the motions, the Court now GRANTS IN PART and DENIES IN PART Defendants' Motion for Attorney's Fees and Costs, docket no. 62, and GRANTS Plaintiffs' Surreply, docket no. 85, and enters the following Order.

BACKGROUND

History of Intellectual Property Rights of Al Hendrix and Leon Hendrix

James Marshall ("Jimi") Hendrix died intestate in 1970, and James Allen ("Al") Hendrix, Jimi Hendrix's father, was the sole heir to the estate. Wasson Aff., docket no. 3, ¶ 3, Ex. A at 1.

On March 8, 1988, Al executed the following grant (the "1988 Grant") to Jimi Hendrix's brother, Leon Hendrix ("Leon"): "I, James A. Hendrix, do hereby give permission to my son, Leon Hendrix, and/or The James (Jimi) Marshall Hendrix Foundation, the right to use the name James (Jimi) Marshall Hendrix for non profit charitable causes only." Nelson Decl., docket no. 64, Ex. F.

Following a state court lawsuit between Al and Leon, an "Amended Agreement" was signed in December 1996. Wilson Decl., docket no. 74, ¶ 4 and Ex. D. Paragraph Ten of the Amended Agreement establishes in part that Al's companies Experience Hendrix LLC ("Experience") and Authentic Hendrix LLC ("Authentic") (collectively "Plaintiffs") are "the sole authorized licensors of Jimi Hendrix performances, songs and publicity rights" and that Authentic "holds exclusive ownership of Jimi Hendrix name, image and likeness for commercial exploitation." *Id.* Ex. D at 3-4, ¶ 10. Paragraph Ten expressly states that "Leon will not . . . exploit or attempt to exploit Jimi Hendrix's name, image or likeness on merchandise of any kind, without a written license from Authentic." *Id.* Paragraph Eleven states that Experience and Authentic "shall be entitled to injunctive and other equitable relief" if Leon breaches the provisions of Paragraph Ten. *Id.* Ex. D at 4, ¶ 11. The

Amended Agreement does not mention the 1988 Grant and does not address Leon's right to use Jimi Hendrix's name for charitable purposes.

History of the James Marshall Hendrix Foundations

Leon created The James Hendrix Foundation in 1987. Wilson Decl., docket no. 74, Ex. A. It was dissolved in 1991. *Id.* Ex. B ¶ 9 (L. Hendrix. Decl.). On January 28, 2003, Leon incorporated a new non-profit corporation called The James Marshall Hendrix Foundation (the "Foundation"). *Id.* Ex. E.

Plaintiffs' Knowledge of the November 22, 2003 Fundraiser

The Foundation held a fundraiser for the Foundation's charitable works on November 22, 2003. Plaintiffs assert that they became aware of the Foundation's fundraiser in early November 2003, when members of the public called them to inquire about their connection to the event. Wilson Decl., docket no. 74, Ex. F ¶ 12 (Janie Hendrix Decl.). Defendants have failed to show that Plaintiffs were on notice of the fundraiser prior to November 2003. The correspondence between the Foundation and Plaintiffs' attorney, Mr. Reed Wasson, in January and February 2003, only shows Plaintiffs' knowledge of the Foundation's formation and the existence of the 1998 Grant. Wasson Decl., docket no. 73, ¶¶ 7-8 and Ex. A; Nelson Decl., docket no. 64, Exs. H, I and J. The correspondence between the parties does not mention the fundraiser planned for November 2003. *See id.*

The Present Lawsuit and Plaintiffs' Motion for a TRO

On November 10, 2003, Plaintiffs sent the Foundation's attorney and Clear Channel Radio, the

Foundation's radio sponsor of the fundraiser, a cease and desist letter, asking them to stop using Plaintiffs' trademarks in the promotion of the fundraiser. Nelson Decl., docket no. 64, Ex. N.

On November 13, 2003, Plaintiffs filed suit against The James Marshall Hendrix Foundation, Leon Hendrix, and other individuals (collectively "Defendants"), alleging violations of the Lanham Act, 15 U.S.C. § 1501 et seq. (First through Fourth Causes of Action), common law trademark infringement (Fifth Cause of Action), and the Washington Personality Rights Act (the "PRA") (Sixth Cause of Action). Compl., docket no. 1, at 5-13, ¶¶ 16-50. These allegations arose out of the Foundation's use of Jimi Hendrix's name, signature and image on its website and in its promotional brochure promoting the November 22, 2003 fundraiser. Davis Decl., docket no. 75, ¶ 10 and Ex. G.

On November 14, 2005, Plaintiffs filed a motion for a temporary restraining order ("TRO") and a preliminary injunction, seeking to enjoin the Defendants' use of Plaintiffs' trademarks and personality rights in connection with the Foundation's November 22, 2003 fundraiser. Docket no. 2. On November 20, 2003, the Court denied Plaintiffs' motion for a TRO and preliminary injunction. Docket no. 16.

Subsequent Activities of the Parties

The activities of the parties following the Court's denial of the TRO have implications for the present motion. In June 2004, the Court struck the trial date based upon the parties' representations that they had been engaged in mediation since February 2004 and were committed to reaching a "global" solution that would have a more lasting effect among the parties,

who have an extensive history of litigation in both federal and state court. Docket no. 27. This mediation was ultimately unsuccessful.

In November 2004, Plaintiffs filed a motion to voluntarily dismiss the case *without prejudice*, which Defendants opposed and which the Court denied. Docket nos. 33, 38. At the same time, Defendants alleged two counterclaims against Plaintiffs: (1) breach of contract, and (2) intentional tortious interference. Docket no. 35. On January 5, 2005, the Court set a trial date of February 23, 2006. Docket no. 40.

On January 13, 2005, Defendants moved for partial summary judgment, seeking the dismissal of Plaintiffs' Sixth Cause of Action under the Washington PRA. Docket no. 41. On April 15, 2005, the Court granted Defendants' motion. Order, docket no. 47.

In May 2005, Plaintiffs filed a motion to voluntarily dismiss the First through Fifth Causes of Action *with prejudice*, which the Court granted on July 27, 2005 despite opposition from Defendants. *See* docket nos. 48-52. In their opposition brief, Defendants had asked the Court to declare this case to be an "exceptional case" under the Lanham Act and award attorney's fees. Docket no. 49. In its Order of dismissal, the Court did not rule on the Lanham Act issue. Order, docket no. 52.

On August 24, 2005, the Court dismissed all claims against the *individual* defendants with prejudice pursuant to a stipulation of the parties. Docket no. 59. On August 31, 2005, the Court dismissed Defendants' counterclaims *without prejudice* pursuant to a stipulation of the parties. Docket no. 60. On

September 16, 2005, the Court entered a judgment in the case. Docket no. 61.

Defendants' Motion for Attorney's Fees, docket no. 62

Defendants now move for $346,693.34 in attorney's fees—for $123,353.15 under the Washington PRA and for $275,340.19 under the Lanham Act. Defs.' Mot., docket no. 62, at 11. They state that $52,000 applies to the defense of both sets of claims. *Id.* Plaintiffs oppose the motion and argue that any award under the Washington PRA should be limited to $22,316. Docket no. 70.

Plaintiffs' Surreply, docket no. 85

In a surreply, docket no. 85, Plaintiffs move to strike material that Defendants submitted with their reply brief.

DISCUSSION

I. *Plaintiffs Assert Defendants' Motion Is an Untimely Motion for Reconsideration.*

Plaintiffs' first argument in opposition to the motion for attorney's fees is that Defendants' motion should be construed as an untimely motion for reconsideration. Plaintiffs argue that the Court previously denied the Defendants' request to declare this an exceptional case under the Lanham Act and award attorney's fees. While it is true that Defendants made such a request, the parties did not brief, and the Court did not decide, the attorney's fees issue under the Lanham Act. Docket nos. 48-52. Thus, the Court does not construe the present motion as a motion for reconsideration.

II. *Defendants Seek Attorney's Fees Under the Washington PRA.*

A. *Statutory Fees Provision*

The Washington PRA provides:

> The prevailing party may recover reasonable attorney's fees, expenses, and court costs incurred in recovering any remedy or defending any claim brought under this section.

RCW 63.60.060(5). An award of attorney's fees and costs under the Washington PRA is discretionary. *See Frank v. Fischer*, 108 Wn.2d 468, 477 (1987) (citing *Walsh Servs. v. Feek*, 45 Wn.2d 289, 298 (1954) (holding that the "may" language in a statutory attorney's fee provision does not require the court to award attorney's fees)). The "prevailing party" is usually one who receives judgment in his or her favor. *See Crest Inc. v. Costco Wholesale Corp.*, __ Wn. App. __, 115 P.3d 349, 354 (Div. 1 2005) (contract case awarding attorney's fees under RCW 4.84.330).

Because Defendants successfully defended Plaintiffs' Washington PRA claim and obtained a judgment in their favor, they are the "prevailing party." Plaintiffs argue that the Court should not award attorney's fees because Plaintiffs brought this claim in good faith. Good faith is irrelevant because the Washington PRA authorizes attorney's fees to a "prevailing party," not only to a party burdened by litigation brought in bad faith. Plaintiffs next argue that attorney's fees are not warranted because Plaintiffs attempted to voluntarily dismiss the claims prior to Defendants' motion for summary judgment on the claim. This argument is not persuasive because the voluntary dismissal that Plaintiffs are referring to is the first one in which they offered to

dismiss the case *without prejudice*. Defendants were entitled to seek an adjudication on the merits. Accordingly, the Court awards attorney's fees to Defendants under the Washington PRA.

B. *Amount of Award*

The Court applies the "lodestar" method for calculating attorney's fees. *See Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597 (1983) (applying lodestar method for state law claims); *Crest Inc.*, 115 P.3d at 351 (same). The Court calculates the "lodestar" by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Bowers*, 100 Wn.2d at 597. To determine the number of hours reasonably expended in the litigation:

> [T]he attorneys must provide reasonable documentation of the work performed. This documentation need not be exhaustive or in minute detail, but must inform the court, in addition to the number of hours worked, of the type of work performed and the category of attorney who performed the work (i.e., senior partner, associate, etc.). The court must limit the lodestar to hours reasonably expended, and should therefore discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time.

Id. Where the attorneys in question have an established rate for billing clients, that rate will likely be a reasonable rate. *Id.* After the lodestar has been calculated, the Court may consider the necessity of adjusting it to reflect factors not considered up to this point. *Id.* at 598.

Defendants seek $123,353.15 in attorney's fees and costs under the Washington PRA, representing work

performed by three law firms. Defs.' Mot., docket no. 62, at 11. The attorneys' rates were reasonable and in some cases below market. Keller Decl., docket no. 63, ¶¶ 5, 10, 15.

Plaintiffs challenge the Defendants' calculations of the number of hours expended defending the Washington PRA claim. The three firms have submitted detailed records indicating the number of hours worked, the type of work performed, and the attorney who performed the work. *See* Simburg Decl., docket no. 66, Ex. B; Nelson Decl., docket no. 64, Ex. B; Gheen Decl., docket no. 65, Ex. A. Defendants have further provided the opinion of an expert who concludes that the three law firms expended a reasonable number of hours on the case. Keller Decl., docket no. 63, ¶¶ 6, 11, 16. This expert opinion does not address whether each firm's proposed allocation for work defending the Washington PRA claim is reasonable. *See id.*

The "Simburg" firm has represented the Foundation since November 2003. Simburg Decl., docket no. 66. The "Betts" firm has represented the Foundation, on behalf of the Foundation's insurer, since April 2004. Nelson Decl., docket no. 64, ¶ 4 and Ex. B at 1. The "Bullivant" firm has represented the individual defendants since April 2004. Gheen Decl., docket no. 65, Ex. A at 3. Of the $123,353.15 in fees and costs sought by Defendants under the Washington PRA, the Simburg firm seeks $57,000.00, the Betts firm seeks $52,727.38, and the Bullivant firm seeks $13,626.15. Simburg Decl. ¶ 11; Nelson Decl. ¶ 9; Gheen Decl. ¶ 7. Defendants request these amounts based on their attorneys' estimates of time spent defending the Washington PRA claim. *See id.*

Plaintiffs argue that the actual time spent defending the Washington PRA claim totals $22,316.00. Wilson Decl., docket no. 74, Ex. K. Plaintiffs arrive at this figure by adding up the time entries that relate to Defendants' partial summary judgment motion. They argue that "no ratio analysis is needed" because Defendants' "exquisitely detailed time records are more than adequate to calculate the exact amount spent in defense of the Personality Rights Act claims." Pls.' Opp'n, docket no. 70, at 19. Defendants' reply brief points out two summary judgment entries that Plaintiffs missed, which would add $507.50 to the total. Suppl. Decl. Nelson, docket no. 81, Ex. H at 3. Defendants also argue that other time spent analyzing Plaintiffs' marks, for example, would have been expended if Plaintiffs initiated just one claim under the Washington PRA, Lanham Act or common law trademark claim instead of six. *Id.* Ex. H at 6 (1.7 hours on June 22, 2004 and 6.4 hours on June 29, 2004, which would add $1417.50 to the total).

The Court concludes that Defendants' ratio analyses are unsupported by the record and instead adopts Plaintiffs' approach to awarding fees. Accordingly, the Court awards $22,316.00 in fees for the undisputed time spent on the partial summary judgment motion. This award covers $18,398.50 incurred by the Betts firm, $1,262.50 incurred by the Bullivant firm and $2,655.00 incurred by the Simburg firm. Wilson Decl., docket no. 74, Ex. K at 6. The Court awards an additional $507.50 that Defendants pointed out in their reply brief was incurred by the Betts firm on the partial summary judgment motion.

In addition, the Court seeks to award fees and costs to acknowledge Defendants' work in defending the Washington PRA claim outside the partial summary

judgment motion. For instance, Defendants defended the Washington PRA claim during the TRO proceedings. Because it is impossible to segregate the hours expended in defending the Washington PRA claim for Defendants' work outside the partial summary judgment motion, the Court has calculated one-sixth[1] of the total fees and costs incurred in the litigation, less the partial summary judgment fees already awarded, as a starting point. These fees and costs total $58,612.52, as shown in Table 1.

Table 1. Calculation of One-Sixth of Fees and Costs Incurred

Firm	*Total Fees and Costs Incurred*	*Total Fees and Costs Less Summary Judgment Fees*	*One-Sixth of Fees and Costs*
Betts	$263,636.92 (Nelson Decl. ¶ 9)	$244,730.92 [263,636.92 - 18,906.00]	$40,788.49 [244,730.92 / 6]
Bullivant	$48,669.69 (Gheen Decl. ¶ 6)	$47,404.19 [48,669.69- 1,262.50]	$7,900.70 [47,404.19 / 6]
Simburg	$62,195.00 (Simburg Decl. ¶10)	$59,540.00 [62,195.00- 2655.00]	$9,923.33 [59,540.00 / 6]
TOTAL			$58,612.52

The Court discounts these fees and costs by fifty percent because Defendants spent unproductive time on unnecessary pleadings. *See Bowers*, 100 Wn.2d at

[1] The Washington PRA claim was one of six alleged causes of action.

597. For example, Defendants needlessly opposed Plaintiffs' motion to voluntarily dismiss with prejudice the claims remaining in the lawsuit. *See* Docket no. 49. Moreover, the Court applies the fifty percent discount because Defendants incurred a significant portion of the fees and costs after the Court's Order of April 15, 2005 dismissing the Washington PRA claim. After applying a fifty percent discount, these fees and costs total $29,306.26, as shown in Table 2. In sum, the Court awards $52,129.76 in fees and costs to Defendants pursuant to RCW 63.60.060(5) for prevailing on the Washington PRA claim, as calculated below:

Table 2. Calculation of the Total Fees and Costs Awarded

Firm	*Partial Summary Judgment Fees*	*One-Sixth of Fees & Costs Discounted by 50%*	*Total Fees and Costs Awarded*
Betts	$18,906.00	$20,394.25	$39,300.25
Bullivant	$1,262.50	$3,950.35	$5,212.85
Simburg	$2,655.00	$4,961.66	$7,616.66
TOTAL AWARDED	$22,823.50	$29,306.26	$52,129.76

III. *Defendants Seek Attorney's Fees Under the Lanham Act.*

A. *Statutory Fees Provision*

The Lanham Act provides:

> The court in exceptional cases may award reasonable attorney fees to the prevailing party.

15 U.S.C. § 1117(a)(3). Defendants are the "prevailing party" as a result of Plaintiffs' voluntary dismissal

with prejudice. *See Zenith Ins. Co. v. Breslaw*, 108 F.3d 205, 207 (9th Cir. 1997) (abrogated on other grounds)). The key issue here is whether the case is "exceptional."

B. *The "Exceptional" Issue*

Defendants argue that Plaintiffs' case is "exceptional" because it is either "vexatious," "groundless," "unreasonable," or "pursued in bad faith." *See Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1156 (9th Cir. 2002); *Stephen W. Boney, Inc. v. Boney Services, Inc.*,127 F.3d 821, 827 (9th Cir. 1997) (a showing of bad faith is not required). For the reasons described below, Plaintiffs' case is not "exceptional." The Court does not award attorney's fees under the Lanham Act.

1. *Vexatious*

There is no Ninth Circuit case defining vexatious under 15 U.S.C. § 1117(a)(3). Defendants rely upon a D.C. Circuit case, *Noxell Corporation v. Firehouse No. 1 Bar-B-Que Restaurant*, 771 F.2d 521 (D.C. Cir. 1985), which does not expressly define vexatious but which does ground its decision to award fees on behavior other than "bad faith." In Noxell, the plaintiff, a Maryland corporation, filed a trademark infringement action against a small California company in the District of Columbia even though less than 1.5% of defendant's sales were in D.C. *See* 771 F.2d at 523 (quoting "*Noxell I*," 760 F.2d 312, 314 (D.C. Cir. 1985)). The D.C. Circuit ordered that the case be dismissed because plaintiff's choice of venue was "unreasonable," "contrary to established law," and "totally at odds with the Supreme Court's unambiguous instruction." *Id.* In its ruling on defendant's motion for attorney fees under the Lanham Act, the

D.C. Circuit awarded fees because the case involved "more than a hint of economic coercion" and because plaintiff engaged in "groundless argument." *Id.* at 526-27. The D.C. Circuit noted that the purpose of the fee provision was "to discourage suits designed to harass." *Id.* at 526.

Defendants argue *Noxell* is analogous to the present case on two factual bases: first, the timing of Plaintiffs' action "was similarly coercive and imposed hardship on the fledgling Foundation;" and, second, Plaintiffs eliminated sponsorship and publicity for the fundraiser by sending a cease and desist letter to Clear Channel Radio. Defs.' Mot., docket no. 62, at 7-8.

Plaintiffs argue that they "took no comparable action" to the plaintiff in *Noxell*. Pls.' Response, docket no. 70, at 11. They argue that they took immediate and reasonable steps to protect their rights under the Lanham Act. They dispute that they knew about the fundraiser prior to November 2003, and assert that they acted as soon as they found out about the event by sending the cease and desist letter and then filing the lawsuit. Plaintiffs assert that they sent a copy of the cease and desist letter to Clear Channel Radio because the Foundation's website led them to believe that Clear Channel Radio was a partner with the Foundation and perhaps a co-infringer of Plaintiffs' trademarks.

Plaintiffs' conduct was not vexatious. It was Plaintiffs' prerogative to file the lawsuit when they did. Contrary to the plaintiff's venue choice in *Noxell*, there was nothing illegal about the timing of the Plaintiffs' lawsuit in this case. The evidence does not show that Plaintiffs knew about the fundraiser prior to November 2003; even if they did, that evidence

would be insufficient to conclude that their behavior was "vexatious." Similarly, sending a letter to Clear Channel Radio was reasonable behavior under the circumstances. Plaintiffs have submitted the expert opinion of Marshall J. Nelson, a partner at Davis Wright Tremaine LLP who has practiced law for over thirty years and who specializes in intellectual property and media law. Nelson Decl., docket no. 72, ¶ 1 and Ex. 1. Having reviewed the case, Mr. Nelson concludes that Plaintiffs' filing of the lawsuit and the motion for a TRO, and the copying of the cease and desist letter to Clear Channel, were reasonable actions for a trademark owner to take, especially given that trademark law compels owners to act to prevent confusion from the unauthorized use of a trademark or risk claims of acquiescence, waiver, laches or abandonment. Nelson Decl., Ex. 2 at 2.

2. *Groundless and Unreasonable*

Defendants argue that Plaintiffs' Lanham Act claims were groundless and unreasonable[2] because "Plaintiffs offered no reasonable basis to doubt the validity of the Grant" and "Plaintiffs ultimately agreed their Lanham Act claims lacked merit when they voluntarily withdrew these claims with prejudice." Defs.' Mot., docket no. 62, at 8-9. Plaintiffs argue that their claims were not frivolous, putting forth many reasons why they doubted the validity of the 1988 Grant. Pls.' Response, docket no. 70, at 12-15. Plaintiffs also argue that their dismissal is not an admission that the claims were groundless. *Id.* at 15-16. Defendants did not respond to Plaintiffs' argu-

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[2] Defendants do not attempt to distinguish their "groundless" argument from their "unreasonable" argument even though these are separate bases for finding a case to be "exceptional" under the Lanham Act. *See Cairns*, 292 F.3d at 1156.

ments in their reply. Defs.' Reply, docket no. 81. Plaintiffs have put forth tenable arguments in support of their claims that satisfy the Court that, for the purposes of Defendants' attorney's fees motion, Plaintiffs' claims were not "groundless" or "unreasonable."

3. *Bad Faith*

Defendants argue that Plaintiffs' claims were brought in bad faith, as shown by "Plaintiffs' misstatements regarding the scope of [their] intellectual property rights in Jimi." Defs.' Mot., docket no. 62, at 9. Specifically, Defendants object to Plaintiffs' claim of "exclusive" ownership in the Jimi name and argue that Plaintiffs should have mentioned the 1988 Grant in the cease and desist letter that was copied to Clear Channel. *Id.* This argument is not supported by the record; Plaintiffs discussed the 1988 Grant and the reasons why they doubted its application to the present set of facts in the cease and desist letter. *See* Nelson Decl., docket no. 64, Ex. N at 4.

Defendants argue this case is similar to a Second Circuit case in which the plaintiff took opposite positions about the existence of a trademark in two different lawsuits. *See Universal City Studios, Inc. v. Nintendo Co.*, 797 F.2d 70 (2d Cir. 1986). That case has no applicability here because Plaintiffs have not taken any contradictory positions.

Defendants also argue that Plaintiffs should have pointed out that the Washington PRA contains an exemption from liability for advertisers. This argument has no bearing on whether Plaintiffs filed the present lawsuit against Defendants in bad faith. Plaintiffs had no obligation to advise Clear Channel of its legal rights and did not sue Clear Channel once Plaintiffs learned that it was not a co-infringer. Plaintiffs did not bring the lawsuit in bad faith.

IV. *Plaintiffs' Surreply, docket no. 85*

Defendants filed new declarations with their reply brief and made new factual assertions in their reply brief regarding the timing of Plaintiffs' knowledge of the November 2003 fundraiser. Plaintiffs move to strike this material, docket no. 85. Even if Plaintiffs knew about the event in January or February 2003, that evidence would be insufficient to conclude that their behavior was "vexatious," "groundless," "unreasonable" or "in bad faith." The Court GRANTS Plaintiffs' Surreply Requesting the Court to Strike Certain Materials Filed with Defendants' Reply and Portions of Defendants' Reply Brief, docket no. 85.

CONCLUSION

The Court GRANTS IN PART and DENIES IN PART Defendants' Motion for Attorney's Fees and Costs, docket no. 62, and awards $52,129.76 in fees and costs to Defendants pursuant to RCW 63.60.060(5). The Court does not award any fees and costs under the Lanham Act because the case is not "exceptional" under 15 U.S.C. § 1117(a)(3).

The Court GRANTS Plaintiffs' Surreply Requesting the Court to Strike Certain Materials Filed with Defendants' Reply and Portions of Defendants' Reply Brief, docket no. 85.

The Clerk is directed to enter a Supplemental Judgment in favor of Defendants for $52,129.76 against Plaintiffs.

IT IS SO ORDERED.

DATED this 4th day of November, 2005.

/s/ Thomas S. Zilly
THOMAS S. ZILLY
United States District Judge

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed JUN 18, 2007]

No. 05-36029
D.C. No. CV-03-03462-TSZ

EXPERIENCE HENDRIX LLC, a Washington Limited Liability Company; *et al.*,
Plaintiffs - Appellants,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation also known as The Jimi Hendrix Foundation; *et al.*,
Defendants - Appellees.

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Argued and Submitted June 5, 2007
Seattle, Washington

MEMORANDUM

Before: PREGERSON, FERGUSON, and IKUTA, *Circuit Judges*.

This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Experience Hendrix, LLC and Authentic Hendrix, LLC (collectively, "Experience") claim they own the exclusive rights to publicize Jimi Hendrix's personality under the Washington Personality Rights Act ("WPRA"), Wash. Rev. Code § 63.60.030. Applying Washington conflict of law rules, we first determine there is an actual conflict between Washington and New York law because the WPRA recognizes a posthumous right of personality, while New York did not recognize such a right at the time of Jimi Hendrix's death in 1970. *See Stephano v. News Group Publ'ns, Inc.*, 64 N.Y.2d 174, 183 (N.Y. 1984); *Gurnee v. Aetna Life and Cas. Co.*, 55 N.Y.2d 184, 191-92 (N.Y. 1982).

Since an actual conflict exists, Washington choice of law rules direct us to determine which jurisdiction has the "most significant relationship" to a given issue, looking at the factors listed in Restatement (Second) of Conflict of Laws § 6 (1971). *See Seizer v. Sessions*, 132 Wash. 2d 642, 649 (1997). The WPRA does not contain a statutory directive to apply Washington law to this case because it does not include a choice of law provision nor does the legislative history expressly indicate an intent that the WPRA apply to out-of-state facts. *See* Restatement (Second) of Conflict of Laws § 6(1) cmts. a-b (1971); *see also Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1147-49 (9th Cir. 2002). Having considered the factors stated in Restatement (Second) of Conflict of Laws § 6(2) (1971), and in light of the general rule that New York law should apply because it was the domicile of Jimi Hendrix at the time of his death, *see* Restatement (Second) of Conflict of Laws § 260 (1971), we conclude that New York has the most significant relationship to the intellectual property rights and the parties at issue here.

Because we conclude that New York law applies to this case and because we hold that no posthumous right of publicity existed in New York at the time of Jimi Hendrix's death, we affirm the district court's grant of partial summary judgment and its award of attorney's fees in favor of the James Marshall Hendrix Foundation. We therefore do not reach the Foundation's further argument that principles of collateral estoppel barred Authentic from bringing this action.

AFFIRMED.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed SEP 10, 2007]

No. 05-36029

D.C. No. CV-03-03462-TSZ
Western District of Washington, Seattle

EXPERIENCE HENDRIX LLC, a Washington Limited Liability Company; *et al.*,
Plaintiffs - Appellants,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation also known as The Jimi Hendrix Foundation; *et al.*,
Defendants - Appellees.

ORDER

Before: PREGERSON, FERGUSON, and IKUTA, *Circuit Judges.*

Appellees' motion for attorneys' fees is GRANTED in part and DENIED in part. We grant appellees' motion for reasonable fees incurred by The James Marshall Hendrix Foundation (the "Foundation"), but deny fees incurred by the directors of the Foundation because they were not parties to the appeal.

The determination of an appropriate amount of fees on appeal is referred to the Court's special master, Appellate Commissioner Peter L. Shaw, who shall conduct whatever proceedings he deems appropriate, and who shall have authority to enter an

order awarding fees. See 9th Cir. R. 39-1.9. The Commissioner's order is subject to reconsideration by this panel. *Id.*

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. CO3-3462-Z

EXPERIENCE HENDRIX, L.L.C., a Washington Limited Liability Company, and AUTHENTIC HENDRIX, LLC, a Washington Limited Liability Company,

Plaintiffs,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation, aka THE JIMI HENDRIX FOUNDATION; LEON HENDRIX, an individual; KENNETH D. HAGOOD, an individual; PETE SIKOV, an individual; DIANE HENDRIX, an individual; CRAIG DIEFFENBACH, an individual; TUNDE RA ALEEM, an individual; and TAHARQA ALEEM, an individual,

Defendants.

ORDER DISMISSING PLAINTIFFS' FIRST THROUGH FIFTH CLAIMS WITH PREJUDICE UNDER RULE 41(a)(2)

NOTE ON MOTION CALENDAR:

June 17, 2005

Plaintiffs move under Fed. R. Civ. P. 41(a)(2) to dismiss their first through fifth claims with prejudice. Having considered all materials submitted in favor of and in opposition to the motion, I hereby GRANT the motion and ORDER that the first

through fifth claims of the First Amended Complaint are DISMISSED WITH PREMDICE.

DATED this 27th day of June 2005.

/s/ Thomas S. Zilly
Thomas S. Zilly
United States District Judge

Presented by:

WILSON SMITH COCHRAN DICKERSON

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Of Attorneys for Plaintiffs

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. C03-3462-Z

EXPERIENCE HENDRIX, L.L.C., a Washington Limited Liability Company, and AUTHENTIC HENDRIX, LLC, a Washington Limited Liability Company,

Plaintiffs,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation, aka THE JIMI HENDRIX FOUNDATION; LEON HENDRIX, an individual; KENNETH D, HAGOOD, an individual; PETE SIKOV, an individual; DIANE HENDRIX, an individual; CRAIG DIEFFENBACH, an individual; TUNDE RA ALEEM, an individual; and TAHARQA ALEEM, an individual.

Defendants.

STIPULATION FOR AND ORDER DISMISSING INDIVIDUAL DEFENDANTS

In accordance with FRCP 41(a)(ii), the undersigned, on behalf of their respective clients, request this Court to dismiss with prejudice all claims against Leon Hendrix, Kenneth D. Hagood, Pete Sikov, Diane Hendrix, Craig Dieffenbach, Tunde Ra Aleem and Tah-rarqa Aleem.

DATED this 2nd day of August, 2005.

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-and-

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Attorney for Defendants The James Marshall Hendrix Foundation and The Jimi Hendrix Foundation

ORDER

IT IS SO ORDERED.

DATED this 26th day of Aug. 2005.

/s/ Thomas S. Zilly
THE HONORABLE THOMAS S. ZILLY
United States District Judge

Presented by:

/s/ John D. Wilson, Jr.
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APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. CO3-3462-Z

EXPERIENCE HENDRIX, L.L.C., a Washington limited liability company, and AUTHENTIC HENDRIX, LLC, a Washington limited liability company,

Plaintiffs,

vs.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation, aka THE JIMI HENDRIX FOUNDATION; LEON HENDRIX, an individual; KENNETH D, HAGOOD, an individual; PETE SIKOV, an individual; DIANE HENDRIX, an individual; CRAIG DIEFFENBACH, an individual; TUNDE RA ALEEM, an individual; and TAHARQA ALEEM, an individual.

Defendants.

[PROPOSED] ORDER DISMISSING
COUNTERCLAIMS WITHOUT PREJUDICE

EXHIBIT A

Pursuant to the parties' stipulation dated August 29, 2005, it is hereby ORDERED that all counterclaims in this matter are dismissed without prejudice.

DATED: Aug. 31, 2005.

/s/ [Illegible]
UNITED STATES DISTRICT JUDGE

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed JUL 27, 2007]

No. 05-36029
D.C. No. CV-03-03462-TSZ
Western District of Washington, Seattle

EXPERIENCE HENDRIX LLC, a Washington Limited Liability Company; *et al.*,
Plaintiffs - Appellants,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation also known as The Jimi Hendrix Foundation; *et al.*,
Defendants - Appellees.

ORDER

Before: PREGERSON, FERGUSON, and IKUTA, *Circuit Judges.*

The panel has voted to deny Appellants' Petition for Rehearing En Banc. Judge Ferguson has recommended denying Appellants' Petition for Rehearing En Banc, and Judges Pregerson and Ikuta have voted to deny the en bane petition.

The full court has been advised of the Petition for Rehearing En Banc and no Judge has requested a vote on whether to rehear the matter en bane. Fed. R. App. P. 35.

The Appellants' Petition for Rehearing En Banc is DENIED.

APPENDIX I

UNITED STATES DISTRICT COURT
Western District of Washington

CASE NUMBER: C03-3462Z

EXPERIENCE HENDRIX,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION.

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT

The Court GRANTS Defendant"s motion for partial summary judgment, docket no. 41, and dismisses the Plaintiffs' sixth claim for relief.

This action is hereby dismissed, as all individual defendants have previously been dismissed and all counterclaims have been dismissed.

BRUCE RIFKIN, Clerk

September 16, 2005
Date

By /s/ Casey Condon
Casey Condon
Deputy Clerk

APPENDIX J

UNITED STATES DISTRICT COURT
Western District of Washington

CASE NUMBER: C03-3462Z

EXPERIENCE HENDRIX,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION.

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT

Supplemental Judgment is hereby entered in favor of Defendants for $52,129.76 against Plaintiffs.

BRUCE RIFKIN, Clerk

November 7, 2005
Date

By /s/ Casey Condon
Casey Condon
Deputy Clerk

APPENDIX K

63.60.010. Use of name, voice, signature, photograph, or likeness is a property right

Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable on-death provisions, or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property. The property right does not expire upon the death of the individual or personality, as the case may be. The right exists whether or not it was commercially exploited by the individual or the personality during the individual's or the personality's lifetime.

63.60.020. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Deceased personality" means any individual whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998.

(2) "Fund raising" means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company, or public entity. A fund-raising activity does not include a live, public performance by an individual or group of individuals for which money is received in solicited or unsolicited gratuities.

(3) "Individual" means a natural person, living or dead.

(4) "Likeness" means an image, painting, sketching, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or parts thereof, or the distinctive appearance, gestures, or mannerisms of an individual.

(5) "Name" means the actual or assumed name, or nickname, of a living or deceased individual that is intended to identify that individual.

(6) "Person" means any natural person, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic, or other organizations.

(7) "Personality" means any individual whose name, voice, signature, photograph, or likeness has commercial value, whether or not that individual uses his or her name, voice, signature, photograph, or likeness on or in products, merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services,

(8) "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, so that the individual is readily identifiable.

(9) "Signature" means the one handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all others.

63.60.030. Right is transferable, assignable, and licensable—Does not expire upon death—Exists without exploitation during lifetime

(1) Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer, and shall not expire upon the death of the individual or personality, as the case may be, so protected but shall pass:

(a) Under the deceased individual's or personality's, as the case may be, last will and testament or, if none, then under the laws of intestate succession applicable to interests in intangible personal property of the individual's or personality's, as the case may be, domicile; or

(b) If the individual or personality, as the case may be, transferred or assigned any interest in the personality rights during his or her life, then the transferred or assigned interest shall pass as follows:

(i) If the transferred or assigned interest was held in trust, in accordance with the terms of the trust;

(ii) If the interest is subject to a cotenancy with any survivorship provisions or payable-on-death provisions, in accordance with those provisions;

(iii) If the interest is subject to any contract, including without limitation a community property agreement, in accordance with the terms of the applicable contract or contracts;

(iv) If the interest has been transferred or assigned to a third person in a form that is not addressed earlier in this section, then the interest may be transferred, assigned, or licensed by such third person, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property of the third person's domicile.

(2) A property right exists whether or not such rights were commercially exploited by the individual or the personality during the individual's or the personality's, as the case may be, lifetime.

63.60.040. Right is exclusive for individuals and personalities

(1) For individuals, except to the extent that the individual may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the individual, subject to the assignment or licensing of such rights, during such individual's lifetime and are exclusive to the persons entitled to such rights under RCW 63.60.030 for a period of ten years after the death of the individual except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(2) For personalities, except to the extent that the personality may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the personality, subject to the assignment or licensing of such rights, during such personality's lifetime and to the persons entitled to such rights under RCW 63.60.030 for a period of seventy-five years after the death of the personality except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(3) The rights granted in this chapter may be exercised by a personal representative, attorney in fact, parent of a minor child, or guardian, or as authorized by a court of competent jurisdiction, The terms "personal representative," "attorney in fact," and "guardian" shall have the same meanings in this chapter as they have in Title 11 RCW.

63.60.050. Infringement of right—Use without consent—Profit or not for profit

Any person who uses or authorizes the use of a living or deceased individual's or personality's name, voice, signature, photograph, or likeness, on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising or solicitation of donations, or if any person disseminates or publishes such advertisements in this state, without written or oral, express or implied consent of the owner of the right, has infringed such right, An infringement may occur under this section without regard to whether the use or activity is for profit or not for profit.

63.60.060. Infringement of right—Superior courts—Injunctions—Liability for damages and profits-Impoundment—Destruction—Attorneys' fees

(1) The superior courts of this state may grant injunctions on reasonable terms to prevent or restrain the unauthorized use of the rights in a living or deceased individual's or personality's name, voice, signature, photograph, or likeness.

(2) Any person who infringes the rights under this chapter shall be liable for the greater of one thousand five hundred dollars or the actual damages sustained as a result of the infringement, and any profits that are attributable to the infringement and not taken into account when calculating actual damages. To prove profits under this section, the injured party or parties must submit proof of gross revenues attributable to the infringement, and the infringing party is required to prove his or her deductible expenses. For the purposes of computing statutory damages, use of a name, voice, signature, photograph, and/or likeness in or related to one work constitutes a single act of infringement regardless of the number of copies made or the number of times the name, voice, signature, photograph, or likeness is displayed.

(3) At any time while an action under this chapter is pending, the court may order the impounding, on reasonable terms, of all materials or any part thereof claimed to have been made or used in violation of the injured party's rights, and the court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(4) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the injured party's rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(5) The prevailing party may recover reasonable attorneys' fees, expenses, and court costs incurred in recovering any remedy or defending any claim brought under this section.

(6) The remedies provided for in this section are cumulative and are in addition to any others provided for by law.

63.60.070. Exemptions from use restrictions—When chapter does not apply

(1) For purposes of RCW 63.60.050, the use of a name, voice, signature, photograph, or likeness in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, without limitation, comment, criticism, satire, and parody relating thereto, shall not constitute a use for which consent is required under this chapter. A matter exempt from consent under this subsection does not lose such exempt status because it appears in the form of a paid advertisement if it is clear that the principal purpose of the advertisement is to comment an such matter.

(2) This chapter does not apply to the use or authorization of use of an individual's or personality's name, voice, signature, photograph, or likeness, in any of the following:

(a) Single and original works of fine art, including hut not limited to photographic, graphic, and sculptural works of art that are not published in more than five copies;

(b) A literary work, theatrical work, musical composition, film, radio, online or television program, magazine article, news story, public affairs report, or sports broadcast or account, or with any political campaign when the use does not inaccurately claim or state an endorsement by the individual or personality;

(c) An advertisement or commercial announcement for a use permitted by subsections (1) and (7) of this section and (a) or (b) of this subsection;

(d) An advertisement, commercial announcement, or packaging for the authorized sale, distribution, performance, broadcast, or display of a literary, musical, cinematographic, or other artistic work using the name, voice, signature, photograph, or likeness of the writer, author, composer, director, actor, or artist who created the work, where such individual or personality consented to the use of his or her name, voice, signature, photograph, or likeness on or in connection with the initial sale, distribution, performance, or display thereof; and

(e) The advertisement or sale of a rare or fine product, including but not limited to books, which incorporates the signature of the author.

(3) It is no defense to an infringement action under this chapter that the use of an individual's or personality's name, voice, signature, photograph, or likeness includes more than one individual or personality so identifiable. However, the individuals or personalities complaining of the use shall not bring their cause of action as a class action.

(4) RCW 63.60.050 does not apply to the owners or employees of any medium used for advertising, including but not limited to, newspapers, magazines, radio and television stations, on-line service providers, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this chapter, unless the advertisement or solicitation was intended to promote the medium itself.

(5) This chapter does not apply to a use or authorization of use of an individual's or personality's name that is merely descriptive and used fairly and in good faith only to identify or describe something

other than the individual or personality, such as, without limitation, to describe or identify a place, a legacy, a style, a theory, an ownership interest, or a party to a transaction or to accurately describe the goods or services of a party.

(6) This chapter does not apply to the use of an individual's or personality's name, voice, signature, photograph, or likeness when the use of the individual's or personality's name, voice, signature, photograph, or likeness is an insignificant, de minimis, or incidental use,

(7) This chapter does not apply to the distribution, promotion, transfer, or license of a photograph or other material containing an individual's or personality's name, voice, signature, photograph, or likeness to a third party for use in a manner which is lawful under this chapter, or to a third party for further distribution, promotion, transfer, or license for use in a manner which is lawful under this chapter.

63.60.080. Community property rights

Nothing contained in this chapter is intended to invalidate any community property rights.

APPENDIX L

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Filed OCT 14, 2005]

NO. C03-362-Z

EXPERIENCE HENDRIX, L.L.C., a Washington Limited Liability Company, and AUTHENTIC HENDRIX, LLC, a Washington Limited Liability Company,

Plaintiffs,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation, aka THE JIMI HENDRIX FOUNDATION; LEON HENDRIX, an individual; KENNETH D. HAGOOD, an individual; PETE SIKOV, an individual; DIANE HENDRIX, an individual; CRAIG DIEFFENBACH, an individual; TUNDE RA ALEEM, an individual; and TAHARQA ALEEM, an individual,

Defendants.

NOTICE OF APPEAL TO THE NINTH CIRCUIT COURT OF APPEALS

Notice is hereby given that Plaintiffs Experience Hendrix, L.L.C. and Authentic Hendrix, LLC appeal to the United States Court of Appeals for the Ninth Circuit from the order granting Defendants motion for partial summary judgment, entered on April 15, 2005, and the judgment entered into this action on September 16, 2005.

DATED this 14th day of October, 2005.

WILSON SMITH COCHRAN DICKERSON

By /s/ John D. Wilson, Jr.
JOHN D. WILSON, JR., WSBA No. 4828
Shilpa Bhatia, WSBA No. 28012
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APPENDIX M

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. CO3-3462-Z

EXPERIENCE HENDRIX, L.L.C., a Washington Limited Liability Company, and AUTHENTIC HENDRIX, LLC, a Washington Limited Liability Company,

Plaintiffs,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation, aka THE JIMI HENDRIX FOUNDATION; LEON HENDRIX, an individual; KENNETH D. HAGOOD, an individual; PETE SIKOV, an individual; DIANE HENDRIX, an individual; CRAIG DIEFFENBACH, an individual; TUNDE RA ALEEM, an individual; and TAHARQA ALEEM, an individual,

Defendants.

AMENDED NOTICE OF APPEAL TO THE NINTH CIRCUIT COURT OF APPEALS

Notice is herby given that Plaintiffs Experience Hendrix, L.L.C. and Authentic Hendrix, LLC appeal to the United States Court of Appeals for the Ninth Circuit from the order granting Defendants motion for partial summary judgment, entered on April 15, 2005, and the judgment entered in this action on September 16, 2005. Plaintiffs also appeal to the United States Court of Appeals for the Ninth Circuit from the order granting Defendants motion for

attorney's fees and costs, entered on November 4, 2005, and the judgment entered in this action on November 7, 2005.

Dated this 21st day of November, 2005.

WILSON SMITH COCHRAN DICKERSON

By /s/ John D. Wilson, Jr.
JOHN D. WILSON, JR., WSBA No. 4828
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APPENDIX N

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. CO3-3462-Z

EXPERIENCE HENDRIX, L.L.C., a Washington Limited Liability Company, and AUTHENTIC HENDRIX, LLC, a Washington Limited Liability Company,

Plaintiffs,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION, a Washington corporation, aka THE JIMI HENDRIX FOUNDATION; LEON HENDRIX, an individual; KENNETH D. HAGOOD, an individual; PETE SIKOV, an individual; DIANE HENDRIX, an individual; CRAIG DIEFFENBACH, an individual; TUNDE RA ALEEM, an individual; and TAHARQA ALEEM, an individual,

Defendants.

DECLARATION OF H. REED WASSON IN SUPPORT OF PLAINTIFFS' RESPONSE TO FOUNDATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PERSONALITY RIGHTS

H. Reed Wasson, under penalty of perjury for the State of Washington, declares as follows:

1. I am an attorney admitted to the practice in the states of Washington and New York and since early 1996 I have been employed as internal counsel by Experience Hendrix, L.L.C. and its affiliate Au-

thentic Hendrix, LLC, plaintiffs in the present action, and I have personal knowledge about the matters contained in this Affidavit which I offer in support of Plaintiffs' Opposition to Defendant The James Marshall Hendrix Foundation's Motion for Partial Summary Judgment.

2. Prior to this employment, I was employed from mid-1993 to early 1996 as a contract attorney by the Seattle law firm of Hendricks & Lewis, and during this employment my work was almost entirely related to the *Hendrix v. Branton* (USDC Case No. C93-537Z) litigation filed before this Court in 1993 and settled in 1995 (the "1990's Lawsuit"), and to the formation and affairs of plaintiffs once they were established in connection with the settlement of that litigation.

3. As part of my duties with plaintiffs, I am custodian of the large library of business and legal documents produced by various parties during the 1990's Lawsuit. These documents have proved to be of great value to plaintiffs' ongoing business, because many issues have arisen involving contracts and claims from prior decades. Having worked with these documents extensively for more than a decade, I am convinced that they are true and accurate copies of the business records formerly maintained by the many different parties who produced them. They are now the principal business records of plaintiffs relating to the commercial and legal background of the Hendrix properties acquired by plaintiffs in the 1995 settlement. The Exhibits to this declaration, and my own knowledge of Hendrix business and legal history prior to the 1990's, are largely drawn from these records. Because no protective order has yet been entered in the present case, dollar amounts and

royalty rates have been redacted from some of the more recent exhibits.

4. Jimi Hendrix was a famous musician and guitar player. He was recently named "The Greatest Guitarist of All Time" by *Rolling Stone Magazine* (9/18/2003). A true and correct copy of the cover of this issue is attached as Exhibit 1.

5. Jimi Hendrix licensed and made efforts to prevent the unauthorized use of his name and likeness for the sale of merchandise during his lifetime.

6. Shortly after Jimi Hendrix released his first album on the Warner Reprise label in the U.S. and became a popular rock star in 1967, Capitol Records released an album using Jimi's name and image, but actually containing recorded performances of Curtis Knight and the Squires made when Jimi was working with this group as a sideman. Jimi and his then management company Yameta filed a federal lawsuit in New York in January 1968 seeking to enjoin distribution of this album on several grounds, based in part on a claim under Section 51 of the New York Civil Rights Law, which provided that a person's name and photograph may not be commercially exploited without his written consent.

7. The U.S. District Court in New York decided the motion for preliminary injunction in February 1968 in a published opinion: *Yameta Co. Ltd. v. Capitol Records*, 279 F. Supp. 582 (1968), refusing relief on the Section 51 claim (because Section 51 expressly excepted use of name or likeness in connection with a licensed performance, which was a disputed fact issue in the case), but found a Lanham Act violation and granted a preliminary injunction on that basis. The injunction was vacated on appeal by

the Second Circuit in April 1968 in a per curiam decision, 393 F.2d 91 (1968). This lawsuit was resolved by a settlement among the parties in June 1968.

8. Attached hereto as Exhibit 2 is a true and correct copy of the title pages and pages 139-40, 177 of the book *Hendrix: Setting the Record Straight* by John McDermott with Eddie Kramer. The attached pages describe the licensing of rights of Hendrix and his group for merchandising posters and books to The Visual Thing, Inc., a company affiliated with filmmaker Jerry Goldstein.

9. Attached hereto as Exhibit 3 are true and correct copies of a memo dated Aug. 5, 1969 from S. Weiss (attorney) to Michael Hecht (accountant) transmitting a check and July 21, 1969 royalty statement from The Visual Thing, Inc. to Jimi Hendrix for sales of books and posters. (These documents were produced in the 1990's Lawsuit by Mr. Branton: #10014424, 27).

10. Attached hereto as Exhibit 4 is a true and correct copy of portions of the deposition testimony given on Feb. 6, 1973 by Jimi's former bass player Noel Redding, referencing the Visual Thing merchandising activity. (This document was produced in the 1990's Lawsuit by Mr. Branton): #10013794-95, 10013947-48, 10014031.)

11. Jimi Hendrix died intestate, unmarried and childless in September 1970, in London, England, and was a resident of New York State at the time of his death. Under New York law, his father James Allen ("Al") Hendrix was his sole heir. At the conclusion of estate administration in New York, all assets and liabilities of Jimi Hendrix's estate were distributed to Al Hendrix in the Distribution of

Assets and Liabilities dated March 30, 1977 (Exhibit 5 hereto). Al Hendrix was a lifetime resident of Washington (except during his military service in World War II) until his death in 2002.

12. From late 1970 until early 1993, California attorney Leo Branton, Jr. ("Mr. Branton") served as Al Hendrix's attorney in managing and administering the Jimi Hendrix music, songs, recordings and intellectual property rights. During most of that period, Mr. Branton utilized a group of commonly controlled offshore and domestic corporations to administer most of the Hendrix properties on Al Hendrix's behalf, but kept Al Hendrix more directly involved in licensing the Hendrix publicity rights and trademarks.

13. Attached hereto as Exhibit 6 is a true and correct copy of a letter dated March 10, 1976 sent by Mr. Branton to Al Hendrix requesting that Al sign enclosed copies of a Jimi Hendrix belt buckle merchandising agreement with Pacifica Manufacturing Company. (This document was produced in the 1990's Lawsuit by Al Hendrix—#20000168). Our files contain no copy of the agreement—apparently Al Hendrix simply signed them and mailed them back to Mr. Branton.

14. Attached hereto as Exhibit 7 are true and correct copies of a letter dated July 29, 1980 from Winterland Productions to Mr. Branton, enclosing a check dated July 28, 1980 to Al Hendrix as an "advance against Wholesale royalties for Jimi Hendrix," together with a royalty report for the second quarter of 1980. (These documents were produced in the 1990's Lawsuit by Mr. Branton: #10017591-92, 10007849). This check and correspondence apparently related to a merchandising license granted by

Al Hendrix earlier in 1980, of which plaintiffs have no copy; the royalty report indicates that the license involved use of Jimi Hendrix name and image on clothing such as T-shirts, sweatshirts and jerseys.

15. Attached hereto as Exhibit 8 is a true and correct copy of an Exclusive Merchandising Agreement dated Nov. 12, 1982 between Al Hendrix and Winterland Productions. (This document was produced in the 1990's Lawsuit by defendant Are You Experienced?, Ltd.: #15019998-2004.) In this agreement, Al Hendrix granted a two-year exclusive license to Winterland to distribute merchandise of every kind embodying the name and image of Jimi Hendrix.

16. Attached hereto as Exhibit 9 are true and correct copies of a 2-year tapestry merchandising license between Al Hendrix, c/o Winterland, and Nickry Novelty Co., and Branton's letter of April 6, 1983 transmitting same to Winterland. (These documents were produced in the 1990's Lawsuit by Mr. Branton: #10007883, 10007705-19.) This was a transaction suggested and approved by Winterland, which was already the exclusive licensee.

17. Attached hereto as Exhibit 10 are true and correct copies of a letter dated August 5, 1983 from Mark Coopersmith, Licensing Director of Winterland, to Mr. Branton, transmitting for execution a Merchandise Licensing Agreement dated June 27, 1983 between Al Hendrix and Personalities, Inc. Also included in this Exhibit is Mr. Coopersmith's June 24, 1983 letter to Mr. Branton indicating that this license was a settlement negotiated by Winterland with a bootlegger. (These documents were produced in the 1990's Lawsuit by Mr. Branton: #10013044-58, 10023125.)

18. Attached hereto as Exhibit 11 are true and correct copies of a Settlement Agreement dated April 2, 1984 between the Estate of Jimi Hendrix, c/o Winterland, and Ultra Graphics, Inc., together with a letter dated April 12, 1984 transmitting same to Mr. Branton. (These documents were produced in the 1990's Lawsuit by Mr. Branton: #10023126, 10020416-20.)

19. Attached hereto as Exhibit 12 are true and correct copies of a consent and cover letter signed by Mr. Branton on behalf of Al Hendrix and dated Feb. 4, 1985, authorizing the use of Jimi Hendrix's name, voice and image in a documentary film. (These documents were produced in the 1990's Lawsuit by defendant Bella Godiva, Ltd: #1204221819.)

20. Attached hereto as Exhibit 13 are true and correct copies (with financial terms redacted) of a Trademark/Copyright Licensing Agreement dated June 1, 1986 between Al Hendrix and Dunlop Manufacturing Inc. authorizing the use of Jimi Hendrix's name on a guitar pedal, with Mr. Branton's July 16, 1986 transmittal of same to Dunlop. (These documents were produced in the 1990's Lawsuit by Dunlop: #50400007-08.)

21. Attached hereto as Exhibit 14 are true and correct copies of a letter from Karen Witte (attorney for Winterland) to Mr. Branton dated Aug. 27, 1986, enclosing copies of Winterland correspondence with Portal Publications regarding infringing merchandise, and pertinent provisions of the California personality rights law. (These documents were produced in the 1990's Lawsuit by Mr. Branton: #10017583-88.)

22. Attached hereto as Exhibit 15 is a true and correct copy of a letter agreement dated June 25, 1987 between Mr. Branton and Dunlop Manufacturing Inc., specifying the term of the June 1, 1986 licensing agreement referenced above (This document was produced in the 1990's Lawsuit by Dunlop: #50400017).

23. Attached hereto as Exhibit 16 is a true and correct copy of a letter dated Nov. 5, 1987 from Karen Witte (attorney for Winterland) to Al Hendrix, enclosing a California form for registration of claim as successor-in-interest to a deceased personality, which Al signed on Nov. 9, 1987. (These documents were produced in the 1990's Lawsuit by Al Hendrix —#20000196-97).

24. Attached hereto as Exhibit 17 is a true and correct copy of the California registration signed by Al Hendrix on Nov. 9, 1987, as filed with the California Secretary of State on January 13, 1988. (This document was obtained from the California Secretary of State by Hendricks & Lewis during the 1990's Lawsuit—#31300034).

25. Attached hereto as Exhibit 18 is a true and correct copy (with financial terms redacted) of a Merchandising Agreement signed on or about August 2, 1988 between Winterland and Are You Experienced? Ltd. (This document was produced in the 1990's Lawsuit by defendant Are You Experienced? Ltd.: #15028849-63). Are You Experienced? Ltd. was incorporated to manage portions of the Hendrix legacy.

26. In early 1993, Mr. Branton and the corporations then managing the Hendrix rights and properties negotiated a sale of same to a third party, repudiated their obligations to Al Hendrix and denied

that he was the ultimate owner of the Hendrix properties which they managed. Al Hendrix then filed the 1990's Lawsuit, which was heavily litigated. In a settlement of the lawsuit reached in 1995, Mr. Branton disclaimed any interest in the properties, and the corporations agreed to transfer all their rights and claims to companies to be formed and owned by Mr. Hendrix.

27. In connection with settlement of the 1990's Lawsuit in 1995, plaintiff Experience Hendrix, L.L.C. was formed as a limited liability company under the laws of Washington to own and administer the music and performance rights related to Jimi Hendrix, and Authentic Hendrix, LLC was formed as a limited liability company under the laws of California to own and administer the publicity rights related to Jimi Hendrix.

28. In connection with settlement of the 1990's Lawsuit in 1995, both Al Hendrix and the defendant companies assigned to Authentic Hendrix, LLC all their respective rights and claims to Jimi Hendrix publicity and personality rights. Attached hereto as Exhibit 19 is a true and correct copy of the Assignment of Publicity Rights dated as of Aug. 11, 1995 signed by Al Hendrix. Attached hereto as Exhibit 20 is a true and correct copy of the Assignment of Publicity Rights dated as of Aug. 11, 1995 signed by defendant companies.

29. Attached as Exhibit 21 is a true and correct copy of the Registration of Claim as Successor-in-Interest to Jimi Hendrix's publicity rights filed with the State of California, executed on behalf of Authentic Hendrix, L.L.C. on April 12, 1996.

30. Attached as Exhibit 22 is a true and correct copy of the Registration of Claim of Rights as Successor-in-Interest to Jimi Hendrix's publicity rights filed with the State of Oklahoma executed, on behalf of Authentic Hendrix, L.L.C. on April 12, 1996.

31. Attached as Exhibit 23 is a true and correct copy of the Registration of Claim to Right of Publicity to Jimi Hendrix's publicity rights filed with the State of Nevada, executed on behalf of Authentic Hendrix, L,L,C. on April 12, 1996.

32. Attached as Exhibit 24 is a true and correct copy of the Registration of Claim for Use of Deceased Individual's Name, Voice, Signature, Photograph, or Likeness for Jimi Hendrix's publicity rights filed with the State of Texas, executed on behalf of Authentic Hendrix, L.L.C. on May 15, 1996.

33. In 1996, Authentic Hendrix negotiated a new Merchandising Agreement with Winterland Productions, in which Winterland continued as the exclusive licensee for a number of major Jimi Hendrix merchandise categories for a three year term. Attached hereto as Exhibit 25 is a true and correct copy of this Merchandising Agreement, dated Oct. 31, 1996 (with financial terms redacted).

34. Since 1996, Authentic Hendrix has entered into numerous additional licenses of the right to use the name and likeness of Jimi Hendrix for a variety of merchandise categories, including t-shirts, club shirts, board shorts, infant wear, sweatshirts, jackets, hats, loungewear, sweatbands, posters, calendars, jewelry, guitars, guitar straps and pedals, action figures, collectible gold records, photos, incense and incense burners, candles, pens, ceramic tiles, afghans, pillowcase covers, key chains, magnets,

watches, clocks, postcards, tins, buttons, stickers, patches, pins, light switch plate covers, license plate covers, computer screensavers, checks and checkbook covers. Attached as Exhibit 26 is a copy of the current Authentic Hendrix product catalog. From 1996 to the present, Authentic has entered into more than 35 separate licenses of Hendrix publicity rights for merchandise. Authentic Hendrix also has licensed the use of Jimi's name and/or likeness in movie and television sets or advertisements, such as the Pepsi ad which appeared in early 2004 during the telecast of the SuperBowl. This licensing rights have and will generated substantial revenues.

35. Starting in 1997, Authentic Hendrix commenced direct mail order distribution of clothing and other Hendrix merchandise, filling orders taken by phone or through its internet web site. Attached as Exhibit 27 are copies of pages from the Authentic Hendrix website. This business has also generated revenue and employed several individuals.

36. In December 1998, Authentic Hendrix, LLC (California) was merged into a new Washington limited liability company having the same name, which is a wholly-owned subsidiary of plaintiff Experience Hendrix, L.L.C.. The current Authentic Hendrix company has continued to own and administer the Hendrix publicity rights, conduct its licensing business, and to engage in enforcement efforts related to such rights.

37. Experience and Authentic employ a Licensing Enforcement Manager, whose principal responsibility is to monitor infringement and demand its cessation, both in connection with Jimi Hendrix songs and recordings, and merchandise containing Jimi's name and/or likeness. This Manager discovers infringement

in various ways, including internet searches, visits to retail stores, and information received from the companies' attorneys, customers, licensees, photographers and fans. When infringement is discovered, the Manager sends a written demand to cease and desist, and in some cases negotiates a settlement.

38. Attached as Exhibit 28 is a true and correct copy of the Registration of Claim for Use of Deceased Individual's Name, Voice, Signature, Photograph, or Likeness filed with the State of Texas on behalf of Authentic Hendrix, LLC on April 22, 2004.

39. Attached as Exhibit 29 is a true and correct copy of the Registration of Claim of Rights as Successor-in-Interest filed with the State of Oklahoma on behalf of Authentic Hendrix, LLC on April 22, 2004.

40. Attached as Exhibit 30 is a true and correct copy of the Registration of Claim to Right of Publicity filed with the State of Nevada on behalf of Authentic Hendrix, LLC on April 30, 2004.

41. Attached as Exhibit 31 is a true and correct copy of the Registration of Claim as Successor-in-Interest filed with the State of California on behalf of Authentic Hendrix, LLC on May 6, 2004.

42. Experience and Authentic were originally owned by Al Hendrix, and are now owned indirectly through trusts by a group of family members chosen by Al. Leon Hendrix has never been an owner, director, shareholder, manager, employee or agent of Experience or either Authentic Hendrix company.

Dated this 31st day of January, 2005.

/s/ H. Reed Wasson
H. REED WASSON, WSBA No. 22763
Counsel
Experience Hendrix, L.L.C. and
Authentic Hendrix, L.L.C.
14501 Interurban Ave. S
Seattle, WA 98168
Phone (206) 241-5464
Fax (206) 241-5477
rwasson@jimi-hendrix.com

EXHIBIT 1

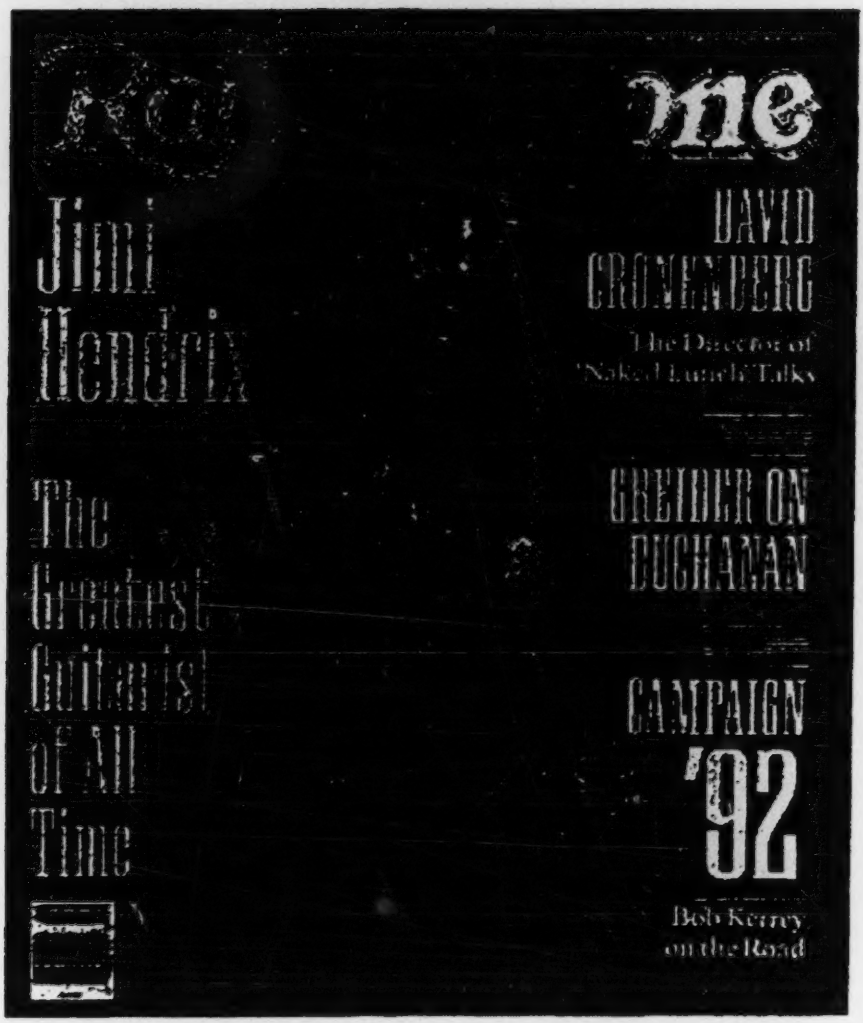

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EXHIBIT 2

HENDRIX
SETTING THE RECORD STRAIGHT
JOHN McDERMOTT WITH EDDIE KRAMER

Edited by Mark Lewisohn

[Logo]
WERNER BOOKS

A Time Warner Company

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* * * *

sound checks. Most nights it took forty-five minutes just to con[illegible]e Hendrix to go on, then when you got him on, he didn't want to come off Every night he'd say, 'Give them their money back. I don't feel like playing tonight. We'll do it tomorrow,' then he would go on and we would have to scream at him to stop at eleven P.M. [because of the local curfew]."

Just as the Experience were among the first rock artists to self-promote their own personal appearances, and one of the first groups to travel with their own PA system as well as hanging speakers throughout an auditorium to improve sound quality, so Hendrix was the first artist to fully control his merchandising—from its concept directly through to the consumer, Michael Jeffery was the first to recognize Hendrix's marketing potential, especially as it so obviously translated into ticket sales. At first glance, Track Records' Chris Stamp had known that an artist as visually compelling as Hendrix had dynamic sales potential. Just four years before, a naive Brian Epstein had given away millions of dollars by taking only a minor holding in a company called Selteab, formed to administer the Beatles' lucrative merchandising rights: in exchange for an up-front cash payout, the group had retained only a paltry 10 percent interest Jeffery, on the other hand, was far too shrewd to let dollars slip through his fingers.

Of the many contacts Jeffery and Chandler had made at the Monterey festival one was Terry Goldstein, whose company, the Visual Thing, secured the rights from Jeffery to market posters (and, afterward, tour hooks) of both Hendrix and the Experience. Later to produce a long string of chart hits for the seminal. funk group War, Goldstein understood the

potential of marrying merchandising techniques of the teen idol era with psychedelic artists—especially one as exotic as Hendrix. Utilizing such photographers as Ron Raffaelli, Goldstein dramatically Captured the essence of the Experience's image, never failing to present rock's interracial, intercontinental combo in a typically striking pose. Sales of memorabilia, right from the outset, were strong.

Citing his experience with Teen Mail Limited, the organization set up to handle merchandising for a number of top British acts, including the Animals, Hoilies and Herman's Hermits, Jeffery tapped Bob Levine to supervise Hendrix's merchandising. Design ideas were cleared in advance through Hendrix and his management The system worked effortlessly, as Goldstein and Levine would settle up regularly, maintaining a strong and open line of communication. Remembers Bob Levine: "Hendrix continually called me for accountings on merchandising sales. Even out on the road he'd take time to call me and ask about the poster money and what his share was. Don't think for a second that this guy didn't realize how profitable merchandising was."

On August 23, the Experience appeared with Janis Joplin, Soft Machine and the Chambers Brothers before a sold out crowd of 18,000 at the Singer Bowl in Flushing Meadows, New York. Backstage, PPX attorney Elliot Hoffman made a surprise appearance, Along with his pregnant wife and elderly mother, he had come by to see the concert. "Two of my clients were staging the show, and one of them whispered into my ear that the security form had not shown. He and his partner had closed the box office—as the concert had sold out—and they were leaving. I had to do something, so 1 went downstairs to Hendrix's

dressing room. Steve Weiss and Albert Grossman were there, and Steve; unlike Jimi, could be antagonistic. I told them straight out that, outside of a handful of uniformed police officers, we had no security personnel on site. I didn't know who to blame, but I told them that we could either be responsible for a lot of people getting hurt or we could do something about the situation. I appealed directly to Hendrix, asking him not to incite the crowd in any way, as people were sure to get hurt, and requested that the house lights remain on all evening."

After Weiss and Grossman huddled briefly, a compromise on the lighting issue was agreed to. Much to the delight of the crowd, which packed the former site of the 1964 World's Pairs, the event was a resounding success. "It was a great show," recalls Hoffman proudly. "No one noticed that there weren't any security guards; there were no fights or injuries." Outside of one minor incident during "Hey Joe," when, as the crowd became unruly, the house lights were brought up full, the Experience capped off a brilliant evening of music. Their performance brought raves from area critics, including a writer from Billboard, who informed the trade, "Hendrix's bluely singing was first rate; his guitar playing superb, and his stage presence, electric. From the opening 'Are You Experienced?,' every number hit the mark."

After the show, Hendrix returned to the Record Plant, where he and Kramer completed mixing for "House Burning Down." Warner Bros. had been clamoring for the group to finish the album, and finally on August 27, 1968, after remixing "Gypsy Eyes" one final timer fittingly, since it was Hendrix's inability to concentrate on this song's basic tracks

that had so frustrated Chas Chandler—Eddie Kramer prepared a tape of the album's four skies and sent it off to be mastered. The marathon final mixing session continued all through the night, well into the morning of the 28th.

* * * *

top priority. "Jimi was not an easy guy to promote and I don't think he wanted to work for a lot of people, hut if he felt comfortable he would work with you. He liked to see familiar faces." Ron Terry echoes that same sentiment 'He would always ask me why we needed particular people, like 'What exactly does that person do for me?'"

As hard as touring was, Hendrix did recognize that Concerts West looked after his needs, requesting them to Jeffery. Hulett's company deserved his loyalty: they had never missed the Experience at airports or forgotten to have food backstage (of special importance to a black American touring the South in the late 1960s), nor sold seats normally reserved for Abe Jacobs to mix the group's sound properly. Hulett and Concerts West had also made the 90-10 net profit split work successfully. It had been Weiss himself who, in the latter half of 1968, had asked Hulett to find more dates to promote the Experience.

With the roles of Concerts East and West now defined, Steve Weiss's function within the organization continued to expand, emerging as de facto business manager—as well as attorney—for both Hendrix and Jeffery. Considering the size of the venues on the itinerary, the profit potential was staggering; to maximize the potential return, efforts were made to unify all advertising and merchan-

dising for, the tour. Jerry Goldstein's company the Visual Thing created a lavish tour book to be sold at each venue. Electric Church, a title coined by Hendrix, was a stylish, thirteen-page collection of photos by noted photographer Ron Raffaelli. Posters of Hendrix and the Experience—including one of Hendrix standing with two topless female admirers—were sold at each concert, providing Are You Experienced Ltd. with lucrative return. Sales of posters had always been strong at Hendrix's concerts but varied considerably from venue to venue, depending on the location of the vendors and the cooperation from local promoters. Now, with every date on the spring tour self-promoted, Concerts East and West had complete control over merchandising sales.

In light of the vast sums of money the Experience stood to earn, a decision was made to send Arthur Johnson, an accountant from Michael Hecht's office, on tour with the band to make Sure that all funds were received and properly handled. While there had been some rumblings about financial impropriety during the 1-968 tour, having an accountant on the road to help the trusted Gerry Stickells had actually come at the request of Michael Jeffery.

Gerry Stickells had fast become one of the key players in the entire organization. As with most who toiled for Jimi Hendrix, Stickells far and away exceeded his basic responsibilities, in his instance those

* * * *

EXHIBIT 3

MEMO PROM 3. WEISS

TO: MICHAEL HECHT August 5, 1969

Dear Michael:

I am pleased to enclose herewith check of GHG Enterprises, Inc. in the amount of $10,757.15 in payment of royalties for Jimi Hendrix books and posters sold by The Visual Thing, Inc. for the period ending June 30, 1969.

I suggest that you check the statement against the contract and that you further check whether the $3,000, advance shown was in fact received.

The enclosed chock was obtained by Ns only after several meetings with the principals and threats of litigation, etc. I do net trust these people.

Beat wishes,

Sincerely,
[Illegible]

SHW:rlt
cc: M. Jeffery
H. Steingarten

THE VISUAL THING, INC.
250 North Canon Drive, Suite 106
Beverly Hills, California 80210
276-8020

New York Address
500 Fifth Avenue
New York, N.Y.
CH 4-4000

July 21, 2969

Jimi Hendrix
c/o Steve Weiss
444 Madison Avenue
New York, Hew York
10019

ROYALTY STATEMENT FOR
PERIOD ENDING JUNE 30, 1969

TOUR SALES:		
BOOKS:	14,908 @ 25c	$ 3,727.00
POSTERS:	33,602 @ 20c	6,760.40
OTHER SALES:		
DOMESTIC (at 10% of Wholesale)		
	110,290 @ 025	2,757.25
FOREIGN (at 5% of wholesale)		
	41,000 @ .0125	512.50
		$ 13,757.15
Lase Amounts Paid:		3.000.00
TOTAL DUE:		$ 10,757.15

EXHIBIT 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOAN GRAHAM MITCHELL and NOEL REDDING,
Plaintiffs,

-against-

KENNETH D. HAGOOD, Administrator of the Estate of JAMES MARSHALL HENDRIX, and ARE YOU EXPERIENCED LTD.,
Defendants.

---

15 Columbus Circle
New York, New York

February 6; 1973
10:00 a.m.

EXAMINATION BEFORE TRIAL of one of the Plaintiffs herein, NOEL REDDING, taken by the Defendants, at the offices of Messrs. Covington, Grant, Howard, Hagood and Holland, at the above place and time.

APPEARANCES:

JEROME B. FLEISCHMAN, ESQ.
Attorney for Plaintiff
Noel Redding
370 Seventh Avenue
New York, New York

-and-

STEVEN L. ENGLBERG, ESQ., of Counsel

MESSRS. COVINGTON, GRANT, HOWARD, HAGOOD & HOLLAND
Attorneys for Defendants
15 Columbus Circle
New York, New York
BY: EDWARD O. HOWARD, ESQ., of Counsel

* * * *

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties-hereto that all rights provided -by the C.P.L.R., including the right to object to any question except as to form, or to move to strike any testimony At this examination are reserved, and, in addition, the failure to object to any question or to move to strike testimony at this. examination shall not be a bar or waiver to make such :notion at, and is reserved for the time of trial;

IT IS FURTHER STIPULATED AND AGREED that this examination may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this

* * * *

[153] you write?

A I wrote two which were recorded by The Experience.

Q What were they, their names?

A The first one was She's So Fine, which is on Axis, Bold As Love and Little Miss Strange, which was on Electric Ladyland's Album.

Q Did you subsequently receive any monies for the use of those compositions on the recordings that you described, Axis-Bold As Love and Electric Ladyland's album?

A Yes.

Q By whom were you paid?

A By Schroeder Music.

Q Was any portion of the money that you subsequently received paid or distributed to Hendrix?

A No.

Q During this period and now X am talking about all of 1968, do you know if any posters. embodying representations of yourself Hendrix and Mitchell were prepared and marketed and sold?

A Yes, there were.

[154] Q Do you know by what company or companies?

A There was a company in Los Angeles called Visual Thing Inc.

Q Was an agreement entered into regarding the sale .of these posters, if you know?

A I think there was an agreement with Jeffery and Company.

Q When you say with Jeffery and Company, what company would you be thinking of?

A Visual Thing.

Q You say Jeffery and this company, was there an agreement between Michael Jeffery and this company, Visual Thing, Inc.?

A I don't know.

Q Did there come a time when there was a change in the management relationship and the group and Charles Chandler?

A Yes.

Q When did that occur?

A It was the summer of '68.

Q Would you describe what change occurred?

A We heard that Chandler wanted to settle down. Be was married. He signed all of his contracts on the group over to Michael Jeffery

CERTIFICATE OF NOTARY

STATE OP NEW YORK)
) SS.
COUNTY OF NEW YORK)

I, CLARENCE EDWARD PARKER, a Stenotype Reporter and Notary Public within and for the State of New York, do hereby certify that the within examination before trial of NOEL REDDING, was held before me at 15 Columbus Circle, New York, New York, on Tuesday, February 6, 1973, at ten o'clock in the morning, and I faithfully and impartially recorded stenographically the questions, answers and colloquy.

I further certify that after said examination before trial was recorded stenographically by mar it was reduced to typewriting under my supervision and I hereby submit that the within contents of said examination before trial are true and accurate to the best of my ability.

I further certify that I an not a relative of nor an attorney for any of the parties connected with the aforesaid examination, nor otherwise interested in the testimony of the witness.

/s/ [Illegible]

EXHIBIT 5

DISTRIBUTION OF ASSETS AND LIABILITIES

DISTRIBUTION, TRANSFER AND SET OVER made as of this 30th day of March, 1977 by KENNETH D. HAGOOD, as Administrator de bonis non of 'The Estate of JAMES M. HENDRIX a/k/a JIMI HENDRIX, to JAMES A. HENDRIX, address, Seattle, Washington, sole distributes of The Estate of JAMES M. HENDRIX.

WHEREAS, on February 19, 1971, the undersigned KENNETH D. HAGOOD, was appointed as Administrator de bonis non of the Goods, Chattels, and Credits ("The Estate") of JAMES M. HENDRIX, by order of the Surrogate's Court of the State of New York, County of New York; and

WHEREAS, subsequent to such appointment, said Administrator undertook to and continues to serve as Administrator; and

WHEREAS, it has heretofore been judicially determined that the sole distributes of The Estate of JAMES M. HENDRIX and the sole person entitled to inherit therefrom and to receive the goods, chattels and credits thereof is JAMES A. HENDRIX; and

WHEREAS, the said JAMES A. HENDRIX has requested that there be distributed and transferred to him all of the assets of The Estate and, also, all remaining liabilities of The Estate, and that the Estate thereafter be closed; and

WHEREAS, the Administrator is willing and prepared to make such distribution:

NOW, THEREFORE, the Administrator does, by this instrument declare as follows:

(a) All right, title, and interest and rights of ownership in and to a certain limited partnership interest which was owned by the Estate in Minerva Properties Partnership which was created on March 1, 1975, with a Certificate of Limited Partnership having been executed by Associated Convalescent Enterprises, a California Corporation, as general partner, and the Estate as a limited partner.

(b) All right, title and interest in and to certain miscellaneous, unmastered tapes which embodies musical performances of the decedent.

(c) All stock of a certain corporation, Della Godiva Music, Inc., which was wholly owned by the decedent.

(d) Certain cash at various times during the administration of The Estate.

(e) All rights in certain mastered tapes including those certain contracts entered into between the decedent and Warner Bros. Records, Inc. under dates, respectively, of June 24,1968 and February 11, 1970.

(f) All rights in certain mastered tapes including a certain recording contract entered into as of February 19, 1971 between Deutsche Gramophone Gesellschaft (Polydor), as distributor, and The Estate and Karana Productions.

(g) All rights and claims of the Estate arising from certain audits of the books and records of Warner Bros. Records, Inc., conducted by Eichler, Tenenbaum & Co., as auditors and accountants for the Estate, with respect to the manufacture and sale of recordings embodying performances of the dece-

dent made pursuant to the said recording contracts entered into with Warner Bros. Records respectively on June 24, 1968 and February 11, 1970.

(h) All rights to writer's royalties and the rights to receive same from Bella Godiva Music, Inc. with respect to musical compositions composed by the decedent.

2. The Administrator, by this instrument, does hereby Inevocably distribute, transfer and set over to said JAMES A. HENDRIX, as sole distributee, all right, title and interest which were of the decedent and/or The Estate in and to the following:

(A) *ASCAP*. Any and all future rights to moneys payable by The American Society of Composers, Authors and Publishers representing royalties which were payable to the decedent as a composer of musical compositions.

(B) *WARNER BROS. RECORDS*. All rights to a claim against Warner Bros. Records in the sum of $18,868.01 representing an overpayment to Michael Jeffery and an underpayment to the Estate of recording royalties for the period ended December 31, 1971.

(C) *PPX*. Any claims of The Estate which may exist against P.P.X. Enterprises and Edward Chalpin, its principal.

(D) *GOLD & GOLDSTEIN*. All rights and any liability of The Estate with respect to certain litigation which has heretofore been instituted against the Estate and others in California concerning recordings of the decedent made at Albert Hall in London, England. Such litigation has not been resolved and the possibility exists of the imposition of some liability, against The Estate. At the same time,

a resolution of the matter may involve additional compensation to the Estate. This distribution encompasses the assumption by the distributee of responsibility for damages, counsel fees, costs and expenses which heretofore might have been the; responsibility of The Estate.

(E) *OLYMPIC SOUND STUDIOS*. Any rights of the Estate which may exist with respect to certain recording tapes st=ill in the possesion of Olympic Sound Studios In England, against which claims have been made, variously, by the Estate, Michael Jeffery, The Estate of Michael Jeffery and Charles (Chas.) Chandler.

(F) *EMBER RECORDS*. Any possible claims of the Estate, including the right to receive royalties, from recordings distributed by Ember Records, an English Company, which embody performances of the decedent.

(G) *POP FILMS, LTD*. All rights to royalties or other claims arising from a certain contract entered. into between POP Films, Ltd. and The Estate kinder date of August 8, 1972.

(H) *COLUMBIA RECORDS*. All rights relating to a certain agreement entered into between the Estate and Columbia Records on May 27, 1971, for the use by CBS Records of certain recordings embodying performances of the decedent and for which an unrecouped advance against royalties was paid.

(I) *SPRINGBOARD RECORDS*. Ali rights and claims against Springboard which has heretofore distributed several albums embodying per of the decedent for which no royalties have been paid.

(J) *ESTATE OF JEFFERY*. Any claim or claims which The Estate had, has or may have against The Estate of Jeffery whether in the United States, England or elsewhere throughout the world. Any Claims which the Estate of Jeffery may have or may hereafter assert against The Estate are also distributed herewith and hereafter the Administrator shall have no liability or responsibility with respect to any such claims.

(K) *TAXES*. All rights to receive any tax refunds, whether Federal, New York State, New York City or otherwise, payable to The Estate either with respect to the Federal Estate (706) Tax Return filed by The Estate, or with respect to any Federal Fiduciary Income Tax Returns filed by The Estate, which said refund claims are presently estimated by Eichler, Tenenbaum & Co. to be in the sum of approximately $185,000.00.

(L) *AMERICAN BANK & TRUST CO.–D.G.G.* The sum of $208,748.26 was heretofore deposited in a firm Special Account with American Bank & Trust Company. The said sum was received from Deutsche Grammophone Gesellschaft (DGG) and represented royalties payable by DGG on Hendrix recordings distributed under an agreement entered into in February, 1971. All rights under said contract were heretofore distributed to JAMES A. HENDRIX who, in turn, transferred such rights, for consideration, to Presentaciones Musicales, S.A. Said funds have been impaired by reason of the failure of the said bank in September, 1976 and the attendant failure of the holding company of the bank, A.B. & T. Corporation. P.M.S.A. has made a claim against the Estate for the amount of the deposit contending that it was the responsibility of the Estate to make good the loss. Litigation was threatened and The Estate was

advised by counsel that in such litigation it was likely that P.M.S.A. would recover on their claim. Therefore, in order to avoid litigation and to save on interest and attorneys' fees, The Estate, with the approval of Mr. Hendrix, agreed to and did pay over to P.M.S.A. the amount of the deposit. All or some of such funds may be recovered either in bankruptcy proceedings of the holding company or in litigation against principals and agents of the bank, the holding company and others. On the other hand, there may be no recovery, either from the bankruptcy or through litigation with the consequent result of a complete, non-recoverable loss of the said sum. All rights with respect to said sum and all losses cognizable under the relevant tax laws are herewith distributed to Mr. Hendrix. It is acknowledged that although such moneys were deposited in an account in the name of Covington, Howard, Hagood & Holland, the real parties in interest were and are P.M.S.A. and Mr. Hendrix, the person ultimately entitled to the net assets of The Estate and ultimately responsible for and subject to the liabilities of the Estate.

(M) *MISCELLANEOUS.*

(1) A claim for moneys due from Barclay's Bank in the sum of approximately $260.04.

(2) A claim for moneys due from Litmusic Publishing Co. in the sum of approximately $1,500.00.

(3) The sum of $1,177.72 due to the Estate from Minerva Properties Partnership.

(4) Any rights relating to a certain documentary film concerning the decedent and produced and distributed by Warner Bros. Pictures.

(5) All exploitation and other rights related to a certain screenplay entitled "Moondust".

(6) Any and all tax liabilities, whether Federal, New York State, New York City or any other State or city taxes which may be or may have been chargeable to and payable by The Estate.

(7) Any and all rights and claims of The Estate arising from the distribution of recordings embodying performances of the decedent by Barclay Records in France and/or by another other companies which have distributed or may distribute such recordings in France, Belgium, The Netherlands, Luxembourg, or in any other parts of Europe or elsewhere throughout the world where rights of distribution were not granted by the decedent, The Estate or authorized representatives of the decedent, The Estate or Mr. Hendrix.

(8) All rights and obligations with respect to a certain debt of The Estate in the amount of $250,000.00 representing a loan made by Mr. Hendrix in such amount to The Estate, with the proceeds of such loan having been invested by The Estate in Minerva Properties Partnership. The promissory note executed by The Administrator is herewith distributed to Mr, Hendrix, without recourse against the Administrator or The Estate, both of whom are hereby discharged and released from any further obligation relating to such loan.

(9) A certain obligation to Bella Godiva Music, Inc. in the amount of $105,000.00 representing loans in such cumulative amount Made by Bella Godiva to The Estate, the responsibility for repayment thereof being herewith distributed to Mr, Hendrix individually.

(10) Any balance of commissions payable to the Administrator, any balance of legal and accounting fees, any additional administrative costs, disbursements and expenses all for and in connection with

services rendered to or in connection with The Estate and not otherwise paid or payable.

(11) Any, and all claims of creditors, of whatever kind, merit or nature, which may have been asserted against The Estate, or which may hereafter be asserted.

(12) Any and all rights of whatever kind or nature which were heretofore within the authority of The Administrator and/or the Ancillary Administrator of the Estate, it being the intention and understanding that all such rights are hereafter vested in JAMES A. HENDRIX, individually.

3. This distribution is made with the specific intent and purpose of closing The Estate of JAMES M. HENDRIX and distributing to Mr. JAMES A. HENDRIX all rights and responsibilities which formerly were of The Estate and The Administrator of The Estate. By reason of the complexity of The Estate, it is probable that some aspects of The Estate have not been delineated herein. It is, nevertheless, the intention by this instrument to distribute to JAMES A. HENDRIX, as sole distributee of the decedent, all right, title and interest which was formerly held and/or controlled by The Administrator, de bonis non of The Estate, to also distribute any assets, claims or rights of the decedent and/or of The Estate which may hereafter come to light and to distribute any and all liabilities, whether or not expressly set forth herein, which were of The Estate and of The Administrator in his capacity as such.

/s/ Kenneth D. Hagood
KENNETH D. HAGOOD
Administrator de bonis non
Estate of JAMES M. HENDRIX

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 30th day of March, 1977, before me personally came KENNETH D. HAGOOD, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same.

/s/ Edward O. Howard
(Notary Public)

ACCEPTANCE OF DISTRIBUTION

I, JAMES A. HENDRIX, hereby accept the distribution herewith made to me by Kenneth D. Hagood as Administrator of The Estate of James M. Hendrix and I acknowledge and agree that hereafter the Said Administrator shall be and is discharged from any further liability or responsibility with respect to the subject matter hereof.

/s/ James A. Hendrix
JAMES A. HENDRIX

Dated: March 31, 1977

STATE OF WASHINGTON)
) ss.:
COUNTY OF KING)

On the 27th day of December, 1977, before me personally came JAMES A. HENDRIX, to me known and known to me to be the individual described in and who executed the foregoing acceptance instrument, and he duly acknowledged that he executed the same.

/s/ [Illegible]
(Notary Public)

ACCEPTANCE OF DISTRIBUTION

I, JAMES A. HENDRIX, hereby accept the distribution herewith made to me by Kenneth D. Hagood as Administrator of The Estate of James M. Hendrix and I acknowledge and agree that hereafter the Said Administrator shall be and is discharged from any further liability or responsibility with respect to the subject matter hereof.

/s/ James A. Hendrix
James A. Hendrix

Dated:March 31, 1977

STATE OF WASHINGTON)
) ss.:
COUNTY OF KING)

On the 27th day of December, 1977, before me personally came JAMES A. HENDRIX, to me known and known to me to be the individual described in and who executed the foregoing acceptance instrument, and he duly acknowledged that he executed the same.

/s/ [Illegible]
(Notary Public)

EXHIBIT 6

Leo Branton, Jr.
Attorney at Law
3450 Wilshire Boulevard, Suite 1107
Los Angeles, California 90010
(213) 385-8031

March 10, 1976

Mr. James A. Hendrix
11332 64th Avenue South
Seattle, Washington 98178

Dear Al:

I have made a deal with Pacifica Manufacturing Company, who will be making some Jimi Hendrix belt buckles in return for a royalty. This company makes belt buckles of other super rock stars, and they have requested permission to use Hendrix in connection with these buckles. They are a very reputable company, and I have seen their work.

Even though these are rights which you have previously agreed to sell to Presentaciones Musicales, S.A., I am having you sign this agreement, even though the formal agreement with PMSA has not yet been drafted. We can always have you assign these rights over to PMSA when I conclude the deal with them.

Therefore, please sign both copies of this document at the place indicated, and return to me in the envelope which is enclosed for your convenience.

My very best to you and the entire family.

Very sincerely yours,

/s/ Leo Branton, Jr.
LEO BRANTON, JR.

EXHIBIT 7

[LOGO]

Winterland Production
Administrative and Sales Office
890 Tennessee Street
San Francisco, CA 94107
415/648-7700

July 29, 1980

Mr. Leo Branton, Jr.
3440 Wilshire Blvd.
Suite 608
Los Angeles, California 90010

Dear Leo:

Enclosed please find a check in the amount of $5000.00 as an advance against wholesale royalties for JIMI HENDRIX. I have also enclosed the second quarter 1980 royalty statement.

Should you have any questions regarding this statement, please feel free to contact me.

Sincerely,

/s/ Donald C. Hunt
DONALD C. HUNT
Executive-Vice President

102a

[LOGO]
Winterland Production

ROYALTY REPORT

NAME OF PROPERTY: JIMI HENDRIX

FOR PERIOD ENDING: 4/1/80 thru 6/30/80

STYLE	NUMBER SOLD	TOTAL
T-shirts	2983 at $2.60 ea.	7755.80
Jerseys	2235 at $3.60 ea.	8046.00
Hats	761 at $3.00 ea.	2283.00
T-shirt returns	43 at $2.60 ea.	-111.80
Jersey returns	6 at $3.60 ea.	-21.60

TOTAL SALES: $ 17,951.40

ROYALTIES DUE LICENSOR AT 10 % $1795.14

LESS ADVANCE PAYMENT: $(5000.00)

BALANCE OF ROYALTIES DUE: $(3204.86)

By: /s/ Donald C. Hunt
DONALD C. HUNT
Executive Vice President
Winterland Productions

Date: July 29, 1980

INVOICE DATE	INVOICE NUMBER	CONTROL NUMBER			TRANSACTION AMOUNT	
7 28 80		J			5,000.00	Advance against Wholesale royalties for Jimi Hendrix Chg. 1153

WINTERLAND PRODUCTIONS
[redacted] TENNESSEE STREET • SAN FRANCISCO, CA 94107

TOTAL AMOUNT OF CHECK IS LAST FIGURE IN COLUMN ABOVE

VENDOR NO.	CHECK NO.	PAGE

Winterland productions
[redacted]

[redacted] Bank
[redacted]

CHECK NUMBER 07091

CHECK DATE 7 28 80

PAY THIS AMOUNT $5,000.00**

PAY

THE SUM OF **5,000*** DOLLARS AND 00 CENTS

TO THE ORDER OF

James A. Hendrix
c/o Leo Branton, Jr.
3440 Wilshire Blvd. Suite 608
Los Angeles, CA 90010

[redacted]

⑈007091⑈ ⑆121030357⑆ 01-60303-5⑈

10007849

EXHIBIT 8

Winterland Production
890 Tennessee Street
San Francisco, CA 94107

Dated: 11-12-82

Mr. James A. Hendrix
c/o Leo Branton, Jr.
1901 Avenue of the Stars
Suite 520
Los Angeles, CA 90067

Re: Exclusive Merchandising Agreement

Gentlemen:

The following will confirm our understanding and offer to acquire certain rights in and to rights owned by you as the sole heir and distributee of the Estate of your son Jimi Hendrix (hereinafter "Artist"). As used herein, the words "you" and "your" shall refer to James A. Hendrix (hereinafter "Licensor"), and "we", "us", and "our" shall refer to Winterland Concessions Company, a California corporation, d/b/a Winterland Productions (hereinafter "Licensee").

1. You hereby grant, convey, and assign to us for the term hereof the exclusive right to utilize the names, symbols, emblems, designs, likenesses, service marks, trademarks, and/or visual representations of Artist (hereinafter "Licensed Property" throughout the world (hereinafter "Licensed Area") in connection with the manufacture, advertisement, distribution, and/or sale and/or the licensing of others to manufacture, advertise, distribute, and/or sell any and all merchandise of every kind and nature utilizing or relating to the Licensed Property in any man-

ner (hereinafter "Licensed Products"). Merchandise shall include but not be limited to T-shirts, jerseys, hats, buttons, patches, stickers, enamel pins, pendants, posters, key chains, calendars, mirrors, cigarette lighters, stash boxes, book covers, clocks, belt buckles, belts, jewelry, and any other article of clothing or tangible object product, commodity, or item upon which the Licensed Property is imprinted. The rights granted hereunder shall include the exclusive right to negotiate and recommend settlements with unlicensed manufacturers, distributors, and sellers of Licensed Products utilizing the Licensed Property.

2. You hereby warrant and represent that:

(a) You have the unrestricted right and power to convey, grant, and assign the rights described above to us and are free to enter into this agreement.

(b) You have not assigned or in any other way sold, conveyed, transferred, or encumbered all or any portion of the rights to any other person, firm, or corporation by any instrument or agreement now valid or outstanding.

(c) No other licenses exist which would permit the manufacture, distribution, and/or sale of products utilizing the Licensed Property during the Licensed Term in the Licensed Area, and you warrant you will not enter into any other license agreements without our written consent which would permit the manufacture, distribution, and/or sale of Licensed Products during the Licensed Term in the Licensed Area, including but not limited to any license and/or sell-off period with respect to particular Products.

(d) You hereby indemnify and save us and our respective successors, assigns, and licensees harmless from and against all claims, damages, loss of

profits, losses, settlements, judgments, expenses, and costs, including reasonable attorneys' fees, which may be suffered, made, incurred, or assumed by us or our successors, assigns, or licensees by reason of any breach or alleged breach by you of any agreement, warranty, or representation made or entered into hereunder by you.

3. (a) You and we agree we are both embarking on a program to stem the flow of unauthorized merchandise of Artist and maximize distribution of legitimate Licensed Products. To that end, you will cooperate and participate, as and when requested by us, in our efforts to: stem the flow of unlicensed merchandise; effectively utilize our existing sales network; license an appropriate group of third parties to manufacture Licensed Products. You agree to cooperate fully to effectuate the intent of this paragraph and the overall agreement, so that we have an opportunity to recoup the advances we will have paid to you.

(b) You and we agree it is the express intent of this agreement that we be permitted to manufacture, advertise, distribute, and/or sell a wide range of Licensed Products through various distribution methods, including normal retail channels and mail order, and to license others to manufacture, advertise, distribute, and/or sell additional Licensed Products. We shall have the exclusive right to manufacture, advertise, distribute, and/or sell and/or the right to license third parties to utilize the Licensed Property on the following products: T-shirts, jerseys, hats, buttons, patches, stickers, enamel pins, pendants, posters, key chains, calendars, mirrors, cigarette lighters, stash boxes, hook covers, clock, belt buckles, belts, and jewelry. With respect to Licensed Products manufactured by us, the rights described in the

preceding sentence shall be subject to the Provisions of paragraph 7 below; with respect to licensed Products manufactured by third-party licensees, the rights described in the preceding sentence shall he subject to the provisions of paragraph 4 below. In addition, other Licensed Products may be proposed to you by us.

4. Notwithstanding anything contained herein, you shall have the right to approve all agreements in writing with respect to the licensing of third parties and settlements with unlicensed manufacturers, distributors, or sellers of' Licensed Products, it being understood that it is the essence of this agreement to negotiate and enter into agreements and settlements during the term of this agreement, and that you will act reasonably and in good faith in your evaluation of third-party licenses and/or settlements we negotiate and. bring to you for approval.

5. (a) In full consideration for the rights herein conveyed, granted, and assigned to us, we hereby agree to pay YOU the following:

(i) seventy-five percent (75%) of gross receipts received by us in connection with licenses granted to third parties for the manufacture, distribution, and/or sale of Licensed Products for purposes of this subparagraph "gross receipts" shall mean monies less all percentage participations and commissions payable by us to third parties, including but not limited to any international licensing agents, which shall be subject to your approval;

(ii) sixty percent (60%) of gross receipts derived from settlement with unlicensed manufacturers, distributors, and sellers of Licensed Products; for purposes of this subparagraph, "gross receipts" shall

mean monies less all amounts expended by us, including reasonable attorneys fees, in connection with our collection of cross receipts;

(iii) ten percent (10%) of the average, wholesale selling price with respect to products manufactured by us.

(b) The term "gross receipts" as used herein shall mean one hundred percent (100%) of all monies actually received by us in connection with exploitation of the rights described herein, but excluding:

(i) all percentage, participations and commissions payable by us to third parties;

(ii) monies held as deposits and subject to refund (until earned);

(iii) payments of governmental fee or tax of any type based on gross receipts as transmitted to us;

(iv) all amounts expended by us, including reasonable attorneys' fees, in connection with our collection of gross receipts.

(c) Within forty-five (45) days after each calendar quarter, we shall furnish you with a complete and accurate statement, along with check, if appropriate, showing the accounting received by us from third-party licensees and earnings accrued by you with respect to products manufactured by us. All payments hereunder shall be in US dollars. Notwithstanding the above, once you have recouped the advance in subparagraph (d) below, your share of any advances secured by us with respect to third-party licenses shall be forwarded to you within thirty (30) days of our receipt thereof. Acceptance by you of such statement and payment for any period shall not, however, preclude you from thereafter questioning

the accuracy thereof. During the Licensed Term and for a period of two (2) years thereafter, we will keep and maintain at our principal place of business true and accurate records of all transactions relating to or affecting to this agreement or any provision hereof, which books and records, together with supporting vouchers, shall he open for inspection by Licensor or its duly authorized representative once with respect to each period during regular business hours and upon seventy-two (72 hours) written notice.

(d) As an advance against payments hereunder, we shall pay you Twenty-Five Thousand Dollars ($25,000) on execution hereof.

(e) We agree to pay you a similar sum following expiration of the term hereof upon and with respect to any and all engagements, contracts, and agreements entered into or negotiated prior to or during the term hereof relating to any of the foregoing, and upon any and all extensions, modifications, amendments, renewals, and substitutions thereof, and upon any resumptions of such engagements, contracts, and agreements which may have been discontinued and resumed within one (1) year after discontinuance. Agreements entered into within six (6) months after the term of hereof on terms similar or reasonable comparable to any offer made during the term hereof, from or through the same offeror or any person, firm, or corporation directly or indirectly connected with such offeror, shall be deemed to have been entered into during the term hereof.

6. The Licensed Term shall commence upon execution hereof and continue for a period of two (2) years therefrom. In the event we have paid you an aggregate sum of One Hundred Thousand Dollars ($100,000) within two (2) years of the date of exe-

cution, the rights granted us hereunder shall be extended for an additional period of one (1) year (hereinafter "Additional Term") commencing on expiration of the Licensed Term.-

7. Prior to the manufacture thereof, we shall furnish you with samples of each Licensed Product to be manufactured by us or by third parties for your approval (which shall not be unreasonably withheld). In the event you do not disapprove of same in whole or in part in writing within seven (7) days of receipt thereof, such failure shall constitute approval by you. Promptly after initial shipment of each Licensed Product, we will notify and furnish and/or arrange for third-party licensees to notify and furnish you with ten samples of each such Licensed Product.

8. Nothing contained herein shall be construed to be prejudicial to or operate in derogation of any rights, licenses, privileges, or property which we may enjoy or to which we may be entitled as a member of the public, and this agreement shall not restrict, diminish, or impair our rights to freely utilize in any work or production any story, idea, plot, theme, sequence, scene, episode, incident, name, characterization, or dialog derived from whatever source which may be in the public domain.

9. As used in this agreement, the term "Licensed Property" means each of the elements specified on page 1 of this agreement and all the elements collectively. We recognize the value of the good will associated with the Licensed Property and that it has a secondary meaning in the mind of the public. We acknowledge as between you and us that the Licensed Property shall be and remain your exclusive and complete property. We shall affix appropriate copyright and/or trademark notice as may be desig-

nated reasonably by you from time to time. We may take all steps necessary to secure world-wide copyright and/or trademark protection for each Licensed Product in your name, and you shall cooperate fully with us with respect to our obtaining such protection.

10. Upon expiration of this agreement, all rights, granted to us shall revert to you. However, for a period of one hundred eighty (180) days thereafter, we may continue to sell Licensed Products previously manufactured by us and on on a non-exclusive basis in accordance with all the terms and conditions contained herein.

11. During the term hereof, you shall not engage in any premiums, giveaways, promotional tie-ins, or other distribution or sale of Licensed Products by yourself or through third parties. This Paragraph shall not preclude movie or record industry promotion (in support of phonograph records or movies produced by you or on which Artist performs or promotions which do not conflict with the rights granted hereunder)

12. Any dispute under or relating to the terms of this agreement or the breach thereof shall be submitted for arbitration to the American Arbitration Association in San Francisco in accordance with the rules promulgated by said Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

13. You shall duly acknowledge, execute, deliver, and/or procure the due execution and delivery to us of any and all further assignments and other instruments which we may deem appropriate, necessary, or expedient to carry out, confirm, or effectuate the purpose and intent of this agreement and the grant of rights made hereunder.

14. This agreement shall bind and inure to each of our respective heirs, legal representative, successors, and assigns, and it is understood that each of us may assign, transfer, grant, and license our rights hereunder in whole or in part to any person, firm, or corporation without limitation.

15. All rights conveyed, granted, and assigned to us by this agreement shall be irrevocable under all or any circumstances, and shall not he subject to reversion, rescission, termination, or injunction. In case of breach of this agreement by us or our successors, licensees, or assigns, your remedy shall be limited to an action at law for damages.

16. You agree to assist us to the extent necessary in the procurement of any protection or to protect any of our rights to the Licensed Property, and we may, if we so desire, commence or prosecute any claims or suits in our own name or in your name, or we may join you as a party thereto. Each of us shall notifv the other in writing of any infringements or limitations by others of the Licensed Property on articles similar to those covered by this agreement which may come to our attention.

17. This agreement shall be made and entered into in the State of California and shall be construed in accordance with and governed in all respects pursuant to the laws of said State.

18. This agreement constitutes the entire agreement between the parties and cannot be modified or amended except by a written instrument executed by the parties hereto, and any prior or contemporaneous agreement of the parties hereto, whether oral or in writing, pertaining to the subject matter hereof shall be deemed merged herewith.

If the foregoing conforms to your understanding, please execute where appropriate below.

Very truly yours,

WINTERLAND PRODUCTIONS
("Licensee")

By /s/ [Illegible]

AGREED AND ACCEPTED:

JAMES A HENDRIX
("Licensor")

By /s/ [Illegible]

EXHIBIT 9

LEO BRANTON, JR.
Attorney at Law
1901 Avenue of the Stars, Suite 520
Los Angeles, California 90067
Telephone (213) 277-8111

April 6, 1983

Mr. Mark Coopersmith
Licensing Director
Winterland Productions
890 Tennessee Street
San Francisco, California 94107

Re: JIMI HENDRIX

Dear Mark:

I am pleased to return herewith three signed copies of the Merchandise Licensing Agreement between Nikry and James A. Hendrix for licensing of the tapestry which I approved.

Inasmuch as the contract has the Term's and Conditions separate from the signature page on the Agreement, I would suggest that each party initial each page of the Terms and Conditions.

For future reference, this should always occur whenever a Contract has an Exhibit attached thereto or there is a separate part to the Agreement. The reason for this is due to the obvious fact that anyone could substitute any set of "Terms and Conditions" if they so desired in event of any future dispute concerning the Contract. I have therefore initialed each page of the Agreement and would request that you have Nikry to send me back a copy of the Contract with each page having been initialed.

Very sincerely yours,

/s/ Leo Branton, Jr.
LEO BRANTON, JR.

LB/ig
Enclosures

P.S. I also approved the "Chilly Willies" can wrapper-cooler deal.

MERCHANDISE LICENSING AGREEMENT

AGREEMENT made this 16th day of February, 1983 by and between JAMES A. HENDRIX, c/o Winterland Productions, 890 Tennessee Street, San Francisco, California, 94107 (hereinafter "Licensor") and NIKRY NOVELTY CO., 7751 Burnet Street, Van Nuys, California 91405 (hereinafter "Licensee"). Licensor grants Licensee the exclusive right during the first six (6) months of the Licensed Term and the non-exclusive right thereafter with respect to the following:

LICENSED AREA: United States and Canada

LICENSED TERM: 2 years from initial on-sale date

ARTIST: JIMI HENDRIX

LICENSED PROPERTY: names, symbols, emblems, designs, service marks, trademarks, logos, visual representations, and likenesses of Jimi Hendrix

LICENSED PRODUCTS: silk-screen fabric wall hangings (also known as tapestries) depicting and/or otherwise incorporating the Licensed Property

ROYALTIES:

Royalty Rate: 8% of the sales price of each tapestry

Guaranteed minimum Payment: $3.000.00

Non-Returnable Advance Against Royalties: $1,500.00

If, at any time during the Licensed Term, Licensor pays any licensee a royalty rate greater than that set out above, then the royalty rate paid such third party shall be substituted for the royalty rate set out above as of the date of the agreement with such third party to pay such higher royalty rate.

COPYRIGHT NOTICE: © 1983 James A. Hendrix

INITIAL ON SALE DATE: April 18, 1983

This agreement includes the Terms and Conditions on the pages attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first above written

("Licensor")	("Licensee")
By /s/ James A. Hendrix	By /s/ Sheldon [Illegible]

TERMS AND CONDITIONS

1. Licensor hereinafter grants Licensee and Licensee hereby accepts the non-exclusive right to utilize the Licensed Property in connection with the manufacture, advertisement, distribution, and sale of Licensed Products in the Licensed Area during the Licensed Term. All other rights with respect to the Licensed Property are hereby expressly reserved.

2. For the license granted herein, Licensee will pay Licensor as follows:

(a) The Royalty Rate shall be applicable to the gross selling price of all Licensed Products delivered or shipped, without deduction of any costs or expenses incurred in the manufacture, advertisement, distribution, or sale thereof, or from uncollectible accounts. Royalties due for each calendar quarter after the date hereof shall be paid to Licensor within fifteen (15) days after the last day thereof.

(b) The advance against royalties shall be paid to Licensor upon execution hereof and shall not be returnable in whole or in part to Licensee.

(c) Licensee shall pay Licensor the Guaranteed Minimum Payment, less such advance payment and royalty payments paid by Licensee to Licensor with the last quarterly statement due hereunder. Notwithstanding the above, if the term of this agreement is for two (2) years, the difference between royalties earned and the Guaranteed Minimum Payment (or if royalties earned are less than the advance, then the difference between the advance and the Guaranteed Minimum Payment) shall he payable with the fourth statement due hereunder.

(d) Concurrently with each payment of royalties pursuant to sub-paragraph (a) above, Licensee shall furnish Licensor with a complete and accurate royalty statement (hereinafter "Statement"), certified as to accuracy by Licensee or by an officer of Licensee if Licensee is a corporation, specifying the quantity sold, gross selling price, and purchaser of the Licensed Products. Licensee shall furnish such Statement to Licensor whether or not any Licensed Products have been sold during the month to which a particular Statement refers. Licensee shall use such statement form(s) as Licensor shall provide or approve. Licensee shall, at its own expense and upon demand by Licensor, but not more than once per year, furnish Licensor with a detailed statement prepared by an independent, certified public accountant, specifying the quantity sold, sales price, and purchaser of the Licensed Products up to the date of Licensor's demand.

(e) All payments made to Licensor shall be in United States currency. Time is of the essence with respect to all payments due Licensor. Interest at the rate of one and one-half percent (1-1/2%) per month shall accrue on any amount due Licensor from and after the date upon which said payment is due, until the date said payment is actually made. Licensor's receipt or acceptance of any Statement or royalty paid pursuant to this agreement (or the cashing of any check or draft constituting payment of any royalty) shall not preclude it from questioning the correctness thereof at any time, and in the event any inconsistencies or mistakes arc discovered in any Statement or royalty payment, Licensee shall immediately rectify such inconsistencies or mistakes and pay the appropriate royalty to Licensor.

(f) Licensee shall keep, maintain, and preserve at its principal place of business accurate books of account and records covering all transactions relating to the license granted herein and this agreement. Licensor and its duly authorized representative shall have the right at all reasonable hours of the day to examine said books of account, records, and all other documents and material in the possession or under the control of Licensee with respect to the subject matter and the terms of this agreement, and shall have free and full access thereto to examine and make extracts and copies therefrom. Licensee shall keep all such books of account and records available for at least two (2) years subsequent to the date of expiration of the Licensed Term, and Licensor and its duly authorized representative shall have the right to examine such books of account and records during such period of two (2) years. In the event there are errors of more than five percent (5%) to Licensor's disadvantage, Licensee will pay auditing costs.

3. (a) Licensee shall, at its expense and prior to its manufacture, distribution, or sale of the Licensed Products, submit a prototype sample of each of the Licensed Products to Licensor, together with any packaging, container, carton, enclosed material, tag, label, wrapping, advertising, or promotional material for use in any media (hereinafter "Packaging") which will be associated in any manner with or used to promote the Licensed Products. Licensee shall not commence the manufacture, distribution, or sale of Licensed Products unless and until Licensor shall have approved the artwork, design, quality, and style of the Licensed Products and the Packaging in writing. Licensor shall endeavor to provide Licensee with written approval or disapproval of the Licensed

Products and Packaging as promptly as is reasonably possible.

(b) Licensee shall not, after having received Licensor's written approval of the Licensed Products and Packaging pursuant to the provisions of subparagraph (a) above, cause or permit any deviation or variation in the artwork, design, quality, or style of the Licensed Products or Packaging without Licensor's approval in writing prior to any much deviation or variation. Licensor shall own all copyrights in the Licensed Products and Packaging. Licensor shall have no obligation to register any copyrights.

(c) Licensee agrees to periodically give written notice of and inform all persons, firms, or corporations to which it distributes Licensed Products as to the appropriate copyright notice(s) to be used in connection with advertising, promotion, display, and sale of Licensed Products.

4. Promptly after initial shipment of each of the Licensed Products, Licensee will so notify Licensor and furnish Licensor with one hundred (100) free samples of each of such Licensed Products. During the continuance of this agreement, Licensee shall:

(a) permit access by a representative selected by Licensor to Licensee's floor stock for sampling purposes at any time during normal business hours without advance notice;

(b) furnish Licensor within fifteen (15) days after receipt of written request therefor with further samples of each of the Licensed Products then being sold by it and as packaged for shipment by it, it being

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All Licensed Products must contain proper copyright information.

understood that Licensee shall not be obligated to furnish such samples free of charge more than once in any calendar quarter; and

(c) sell additional quantities of Licensed Products to Licensor at the lowest price charged any third party upon receipt of written request therefor or at the price set out on page 1, if any, whichever is lower.

5. As used in this agreement, the term "Licensed Property" means each of the elements specified on page 1 hereof individually and all such elements associated therewith, the Licensed Property having a secondary meaning in the mind of the public. Licensee acknowledges that the Licensed Property (including all rights therein and goodwill associated therewith) shall, as between Licensee and Licensor, be and remain the exclusive and complete property of Licensor. Licensor reserves the right to lease, authorize, or permit use of the Licensed Property by third parties, as it may see fit.

Licensee will not use or authorize use of the Licensed Property in any manner, at any time, or in any place not specifically licensed herein.

6. (a) Licensee represents and warrants that the Licensed Products will be: (i) of a high standard in style, appearance, and quality; (ii) manufactured, advertised, distributed, and sold in accordance with all applicable federal, state, and local laws and in a manner which will not reflect adversely upon Licensor or those with whom it has contractual arrangements with respect to the Licensed Property; and (iii) diligently advertised and distributed throughout the Licensed Area. Licensee also warrants it use its best efforts to obtain maximum sale thereof in the Licensed Area during the Licensed Term.

(b) Licensee shall distribute and sell the Licensed Products outright, not on an approval, consignment, sale, or return basis, and only to jobbers, wholesalers, and distributors for distribution and sale to retail stores, and to retail stores for sale to the public. Without the express, prior, written consent of Licensor, Licensee shall not knowingly distribute or sell the Licensed Products to distributors, wholesalers, jobbers, sponsors of a radio or television program, or retail stores or merchants whose sales or distribution are or will be made for publicity or promotional tie-in purposes, combination sales, premiums, giveaways, at concert sites or to persons who will sell at concert sites, or similar means of merchandising or whose business methods and practices are questionable. If Licensee distributes or sells any Licensed Products at a special price to any of its subsidiaries or to any other person, firm, or corporation related in any manner to it or its officers, directors, or major stockholders, it shall pay a royalty on such sale based upon the price generally and customarily charged the trade by it. Licensee may not distribute and/or sell directly to consumers through mail order or any. other method.

(c) Licensor reserves the right to manufacture, distribute, and sell or grant to others the right to manufacture, distribute, and sell the Licensed Products in connection with a direct mail offer, premium giveaway, self-liquidator, commercial tie-in, fan club, and/or promotion of and/or sale and/or distribution of merchandise at Artist's concerts and live performances. Notwithstanding the above, licensor may grant Licensee the right to any of the above in a particular instance, but such grant must be made in writing prior to the Licensee's use in the above manner.

Licensee shall not offer for sale, advertise, or publicize any Licensed Products via television, radio, newspapers, magazines, or any other media without Licensor's prior written approval in each instance, which approval may he granted or withheld by Licensor at its sole discretion, such approval shall not be unreasonably withheld.

(d) Licensee shall not enter into any sub-license or agreement for the manufacture, distribution, or sale of Licensed Products. Licensee shall not have the Licensed Products manufactured for it by a third party unless it first obtains Licensor's written approval and unless third party enters into an agreement with Licensor on its usual form for such agreements not to supply the Licensed Products to anyone other than Licensee. Any attempt by Licensee to grant sub-licenses or to assign or part with possession or control of the license granted pursuant to this agreement or any of its rights under this agreement shall constitute a material broach of this agreement.

7. (a) "Notice" as used in this paragraph shall mean the copyright and/or trademark notice and/or appropriate notice of registration, application for registration, or use of any licensed trademark or service mark.

(b) Licensee shall print, stamp, or mold the notice on all Licensed Products and each package or container used in connection therewith and on each label, advertisement, and promotional release concerning any Licensed Products, all in accordance with instructions from Licensor, including without limitation instructions with respect to position and letter size. No Licensed Products or any package, container, label, advertisement, or promotional release upon which the notice is printed, stamped, or molded pur-

suant to the preceding sentence shall contain any other copyright notice whatsoever unless Licensor has given Licensee prior written consent thereto. Licensor may at any time and from time to time change the notice, effective not less than thirty (30) days after receipt by Licensee of notice of such change. Licensee shall, at its own expense, take all steps necessary to secure worldwide copyright protection for the Licensed Products (including but not limited to steps under the United States Copyright Act and Universal Copyright Convention) in the name of Licensor, and shall deliver to Licensor all the copyright registration certificates issued therefor, together with a facsimile of the registered material within one (1) month after initial sale of any Licensed Products to the general public, and Licensor may require Licensee to secure similar copyright for any label, package, container, advertisement, or promotional release used in connection with any Licensed Products. Licensor shall cooperate fully with Licensee in connection with Licensee's Obtaining copyright protection in the name or Licensor or in the name of a copyright proprietor other than Licensor or Licensee. Licensor may similarly require Licensee to register any Licensed Products or any labels, packages, containers, advertisements, or promotional releases in connection therewith as trademarks and/or service marks in the appropriate class in the name of Licensor.

(c) Licensee acknowledges and agrees that: (i) all copyrights, trademarks, service marks, and the rights to same referred to in sub-paragraph (b) above in the name of and/or owned by Licensor shall be and remain the sole and complete property of Licensor; (ii) all such copyrights, trademarks, service marks, and the rights to same in the name or or owned by

any copyright proprietor other than Licensor or Licensee shall be and remain the sole and complete property of such copyright proprietor; (iii) all trademarks and service marks and/or the right to use same which arise out of the license hereby granted to use the License Property shall be and remain the sole and complete property of Licensor; (iv) Licensee shall not at any time acquire or claim any right, title, or interest of any nature whatsoever in any such copyright, trademark, or service mark by virtue of this agreement or its uses thereof in connection with the Licensed Products; and (v) any right, title, or interest in or relating to any such copyright, trademark, or service mark which comes into existence as a result or during the term of the exercise by Licensee of any right granted it hereunder shall immediately vest in Licensor. Licensee acknowledges the validity of all such copyrights, trademarks, or service marks, and agrees never to contest or assist others in contesting the validity thereof.

8. Licensee agrees to assist Licensor to the extent necessary in the procurement of any protection or to protect of any of Licensor's rights to the Licensed Property, and Licensor may, if it so desires, commence or prosecute any claims or suits in its own name or in the name of Licensee or join Licensee as a party thereto. Each party shall notify the other in writing of any infringements or imitations by others of the Licensed Property on articles similar to those covered by this agreement which may come to its attention, and Licensor shall have the sole right to determine whether or not any action shall be taken on account of any such infringements or imitations. Licensee shall not institute any suit or take any action on account of any such infringements or imi-

tations without first obtaining written consent of Licensor.

9. (a) Licensor warrants and represents that.: (i) it is free to enter into and fully perform this agreement; and (ii) all ideas, creations, materials, and intellectual property furnished by it in connection with the Licensed Property will be its own and original creation (except for matters in the public domain or material which it is fully licensed to use). Licensor will at all times indemnify and hold Licensee harmless from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of any breach by Licensor of any representation, warranty, or agreement made by it herein, provided that Licensee shall notify Licensor in writing promptly upon its acquisition of knowledge of any such claim or suit and that such indemnity shall not exceed the value of royalties accrued or advances paid to Licensor, whichever is greater. The above warranty shall apply only to judgments and settlements entered into with Licensor's consent in writing, which shall not be unreasonably withheld. Licensor shall, at any time prior to judgment, have the option of undertaking and conducting the defense of any claim or suit which may be subject to the indemnification provisions of this paragraph. Licensee shall not enter into any settlement of any claim or suit which may be subject to the indemnification provisions of this paragraph without Licensor's express consent in writing.

(b) Licensee hereby indemnifies and agrees to hold Licensor harmless from: (i) any claims or suits arising out of any alleged defects in the Licensed Products; (ii) the unauthorized use of any patent, process, method, or device, infringement of any copy-

right, trade name, patent, libel, or invasion of the rights of privacy or publicity or other property rights; (iii) failure to perform; or (iv) infringement or breach of any other personal or property right of any person, firm, or corporation by Licensee, its officers, employees, agents, or anyone directly or indirectly acting by, through, on behalf of, pursuant to contractual agreement or any other relationship with Licensee in connection with the preparation, manufacture, distribution, advertising, promotion, and/or sale of Licensed Products and/or any material relating thereto and/or naming or referring to any performers, personnel, marks, and/or elements. With respect to the foregoing indemnification, Licensee shall defend and hold Licensor, its respective subsidiaries and affiliates, and its employees and agents harmless at no cost and expense to them whatsoever, including but not limited to attorneys' fees and court costs. Licensor shall have the right to defend any such action or proceeding with attorneys of its own selection. Licensee hereby agrees it shall indemnify and forever hold Licensor, its respective subsidiaries and affiliates, and its employees and agents harmless against and from any and all claims (whether justified or unjustified), costs, liabilities, judgments; damages, and expenses, including without limitation reasonable attorneys' fees arising out of any breach or alleged breach by Licensee of any provision of this agreement or any misrepresentation made by Licensee herein or any act not expressly authorized by this agreement.

10. (a) Licensee shall, at its sole cost and expense throughout the Licensed Term and the disposal period, obtain and maintain standard product liability insurance, the form of which must be acceptable to Licensor, from a qualified insurance company

licensed to do business in the State of California, naming Licensor, its respective subsidiaries and affiliates, and its employees and agents as additional named insureds, which policy shall provide protection against any and all claims, demands, and causes of action arising out of any defects or failure to perform, alleged or otherwise, in the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be a minimum of One Million Dollars ($1,000,000) combined, single limit for each single occurrence for bodily injury, and One Hundred Thousand Dollars ($100,000) for property damage. Said policy shall provide for ten (10) days' notice to Licensor from the insurer by registered or certified mail, return receipt requested, in the event of any modification, cancellation, or termination of said policy. Licensee shall furnish Licensor with a certified copy of said policy providing such coverage within thirty (30) days after the date of this agreement, and in no event shall Licensee manufacture, distribute, or sell Licensed Products prior to receipt by Licensor of such evidence of insurance.

(b) Licensee shall, at its sole cost and expense throughout the Licensed Term and the disposal period, obtain and maintain standard advertiser's liability insurance, the form of which must be acceptable to Licensor, from a qualified insurance company licensed to do business in the State of California, naming Licensor, its respective subsidiaries and affiliates, and its employees and agents as additional named insureds. The amount and coverage shall be a minimum of Five Hundred Thousand Dollars/One Million Dollars ($500,000/$1,000,000). Said policy shall provide for ten (10) days' notice to Licensor from the insurer by registered or certified mail, return receipt requested, in the event of any modification,

cancellation, or termination of said policy. Licensee shall furnish Licensor with a certified copy of said policy providing such coverage within thirty (30) days after the date of this agreement, and in no event shall Licensee manufacture, distribute, or sell Licensed Products prior to receipt by Licensor of such evidence of insurance.

11. (a) In the event Licensee fails to: (i) place the Licensed Products on sale to the general public on or before the initial on-sale date; (ii) actively manufacture, advertise, distribute, or sell the Licensed Products in all portions of the Licensed Area; (iii) sell any Licensed Products during any calendar quarter; (iv) make any payment or furnish any Statement in accordance herewith (time is of the essence with respect to Statements and payments); (v) comply with any other of its obligations hereunder, or in the event a voluntary petition in bankruptcy is filed by Licensee or an involuntary petition in bankruptcy is filed against Licensee and not dismissed within thirty (30) days thereafter or Licensee takes adventage of any insolvency law, then in any of such events, Licensor shall have the right, at its option and in addition to any other right of any nature it may have at law or in equity, to do any or all of the following: (i) terminate this agreement; (ii) delete from the operation of this agreement any elements(s) of the Licensed Property or any Licensed Products; (iii) require immediate payment of all royalties then due or becoming due hereunder, all upon written notice to Licensee.

(b) In the event Licensee is prevented from manufacturing or distributing the Licensed Products because of any act of God, unavoidable accident, fire, epidemic, strike, lockout or other labor dispute, war, riot or civil commotion, act of public enemy, enact-

ment, rule, order or act of government or governmental instrumentality (whether federal, state, local, or foreign), or other cause of a similar or dissimilar nature beyond Licensee's entire control, and such condition continues for a period of three (3) months or more, either party hereto shall have the right to terminate this agreement, effective at any time during the continuation of such condition by giving the other party at least thirty (30) days notice to such effect.

12. Upon expiration or termination of this agreement, all rights granted Licensee shall forthwith revert to Licensor, with the following consequences:

(a) Licensor shall thereafter be free to license others to use the Licensed Property in connection with the manufacture, advertisement, distribution, and sale of items identical or similar to the Licensed Products in the Licensed Area.

(b)(i) Licensee shall not thereafter manufacture, advertise, distribute, or sell Licensed Products in any place whatsoever, except that in the event of the expiration of this agreement on the last day of the Licensed Term hereof or the termination of this agreement pursuant to any provision of paragraph 12 hereof, Licensee may continue to sell any Licensed Products previously manufactured and on hand on a non-exclusive basis during a period of sixty (60) days after expiration of the Licensed Term, in accordance with all the terms and conditions contained in this agreement and at prices which shall not, except with Licensor's prior written consent, be lower than the prevailing, wholesale price(s) charged by Licensee during the period of ninety (90) days immediately preceding such expiration or termination. Licensee must ship said goods previously manufactured within

the period of sixty (60) days referred to in this paragraph. During such sell-off, Licensee may not sell Licensed Products pursuant to this paragraph to affiliated or related companies or to its officers and/or directors.

(ii) In lieu of allowing Licensee to exercise the sell-off described above, Licensor shall have the right to buy back all. Licensed Products previously manufactured and on hand at Licensee's cost. In such event, Licensor shall communicate its desire to exercise such right by written notice to Licensee after receipt of the inventory described in sub-paragraph (iv) below;

(iii) Notwithstanding anything to the contrary contained herein, Licensee shall not manufacture, sell, or dispose of any articles covered by this license after its expiration or termination based on the failure of Licensee to affix notice of copyright, trademark, or service mark registration or any other notice to the articles, cartons, containers, packaging, wrapping, or advertising, promotional, or display material, or because of Licensee's departure from the quality and style approved by Licensor pursuant to paragraphs 3 and 6 herein.

(iv) Sixty (60) days prior to the date of expiration of the Licensed Term or ten (10) days after the effective date of termination of the license prior to expiration date of the Licensed Term, Licensee shall account to Licensor in a statement indicating the number and description of Licensed Products it or its manufacturer has on hand or is in the process of manufacturing as of the date of said statement. Licensor shall have the option of conducting a physical inventory of Licensee or its manufacturer in order to verify such statement of remaining inventory. If

Licensee does not supply the statement of inventory and work in process or refuses to permit Licensor to conduct such physical inventory, Licensee shall forfeit its rights to dispose of any Licensed Products subsequent to the date of expiration of the Licensed Term or the effective date of any termination pursuant to the provisions of this paragraph. During the last sixty (60) days of the Licensed Term, Licensee shall not manufacture more than one hundred ten percent (110%) of the goods manufactured in the previous one hundred twenty (120) days (divided in half) without Licensor's written consent. Nothing contained in this paragraph shall be construed to limit Licensor's rights or remedies.

(c) Licensee acknowledges that its failure (except as otherwise provided herein) to cease the manufacture, sale, or distribution of Licensed Products or any class or category thereof upon the expiration or termination of this agreement will result in immediate and irreparable damage to Licensor and to the rights of any subsequent licensee. Licensee acknowledges and admits that there is no adequate remedy at law for such failure to cease manufacture, sale, or distribution, and agrees that in the event of such failure, Licensor shall be entitled to equitable relief by way of temporary and permanent injunction and such other and further relief as any court with competent jurisdiction may deem just and proper.

(d) Licensee shall, upon expiration or termination of the license, turn over to Licensor all molds and other materials which reproduce the Licensed Products or give Licensor satisfactory evidence of the destruction of said molds and other materials. Licensee shall be responsible to Licensor for any damage caused by unauthorized use by Licensee or

others of such molds or materials of reproduction which are not turned over or destroyed.

(e) With respect to inventory and/or work in progress at expiration of the Licensed Term, any renewal term, or a sell-off period as set out in paragraph 12(b)(i) above as permitted by this agreement, such inventory shall first be offered for sale in writing to Licensor at Licensee's cost, and if Licensor declines such offer, such inventory shall be destroyed within seven (7) days thereafter, an affidavit of destruction signed by an officer of Licensee being sent to Licensor within seven (7) days after such destruction.

(f) Licensee shall stamp out, cross out, or eliminate any identification of Licensor, the Licensed Property, and the Licensed Products in any of its catalogs, so that it is obvious to the reader such merchandise is no longer for sale; Licensee shall reprint its catalog within six (6) months of the termination date hereunder without any reference to Licensor, the Licensed Property, or the Licensed Product.

13. (a) Any attempted or purported assignment or other transfer, sub-license, mortgage, or other encumbrances of this agreement by Licensee without prior written approval of Licensor shall be void and of no effect. Licensor may assign this agreement in whole or in part but shall furnish written notice of any such assignment to Licensee.

(b) Nothing herein contained shall be construed to constitute a partnership or joint venture between the parties hereto, and neither party shall become bound by any representation, act, or omission of the other. Licensee is an independent contractor in the

manufacture, advertisement, sale, and distribution of Licensed Products, and Licensee will pay all sales taxes and other charges imposed on either party by any law, ordinance, or requirement of any government or governmental instrumentality (whether federal, state, local, or foreign) in connection therewith.

(c) A waiver by either party of any term of condition of this agreement in any instance shall not he deemed or construed to be a waiver of such term or condition in the future or any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative, and none shall be in limitation of any other remedies, rights, undertakings, obligations, or agreements of either party.

(d) All notices required or desired to be given hereunder shall be given in writing by personal delivery, mail, or telegram at the respective addresses of the parties herein or at such other address(es) as may be designated by registered or certified mail sent by either party hereto to the other. Notice given by mail or telegram shall be deemed given on the date of mailing thereof or of delivery to a telegraph office, charges prepaid.

(e) This agreement and all matters or issues collateral thereto shall be governed by the laws of the State of California applicable to contracts performed entirely therein. The entire understanding between the parties hereto relating to the subject matter hereof is contained herein, and no warranties, representations, or undertakings are made by the parties hereto except as expressly provided herein. This agreement cannot be changed or terminated orally.

(f) If any legal action or other proceeding is brought for enforcement of this agreement or as a result of a breach, default, or misrepresentation in connection with any of the provisions of this agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding in addition to any other relief to which such party may be entitled.

(g) Any dispute under or relating to the terms of this agreement or the breach thereof shall be submitted for arbitration to the American-Arbitration Association in San Francisco in accordance with the rules promulgated by said Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

SUPPLEMENT TO AGREEMENT

Paragraph 6. (c) to read as follows:

(c) Licensor reserves the right to manufacture, distribute, and sell or grant to others the right to manufacture, distribute, and sell the Licensed Products in connection with a direct mail offer, premium giveaway, self-liquidator, commercial tie-in, fan club, and/or promotion of and/or sale and/or distribution of merchandise at Artist's concerts and live performances. Notwithstanding the above, Licensor shall first offer to buy from or license to Licensee such Licensed Products before buying from or licensing to others. Such offer shall be on the same terms and conditions as purchases from or licenses to others and shall be given to Licensee in writing. Licensee shall have 10 days to accept any such offer or offers in writing. If Licensor does not convey written acceptance within 10 days the offer shall be deemed refused.

Licensee shall not offer for sale, advertise, or publicize any Licensed Products via television, radio, newspapers, magazines, or any other media without Licensor's prior written approval in each instance, which approval may be granted or withheld by Licensor at its sole discretion, such approval shall not be unreasonably withheld.

EXHIBIT 10

[LOGO]
Winterland Productions

August 5, 1983

Mr. Leo Branton, Jr.
1901 Avenue of the Stars
Suite 520
Los Angeles, CA 90067

Dear Leo:

Enclosed please find four copies of a Merchandise Licensing. Agreement between Jimi Hendrix and Personalities, Inc. for your execution. The agreements will grant Personalities the license to manufacture and distribute buttons and two types of key tags (samples enclosed).

The deal is as follows:

Royalty rate:	15%
Advance:	$3,000.00
Term:	One Year

We are currently finalizing settlements with Personalities, and the relevant settlement agreements have been previously forwarded to your attention.

Sincerely,

/s/ Mark Coppersmith
MARK COOPERSMITH
Licensing Director

Enclosures

MC/ld

MERCHANDISE LICENSING AGREEMENT

AGREEMENT made this 27th day of June 1983, by and between Jimi Hendrix c/o Winterland Productions, Inc. (hereinafter "Licensor") and PERSONALITIES, INC., (hereinafter "Licensee")

LICENSED AREA: United States and Canada

LICENSED TERM: One Year From Initial On-Sale Date

ARTIST: Jimi Hendrix

LICENSED PROPERTY: Names, symbols, emplems, designs, service marks, trademarks, logos, visual representations, and likenesses of ARTIST

LICENSED PRODUCTS: Novelty Buttons, "Hipster" —keytag/bottle openers and lucite keychains

ROYALTIES:

Royalty Rate: 15% of Licensee's Gross Selling Price

Guaranteed
Minimum Payment: None

Non-Returnable
Advance Against
Royalties: $3,000

If at any time during the Licensed Term, Licensee pays any licensor a royalty rate greater than that set out above, then the royalty rate paid such third party shall be substituted for the royalty rate set out above as of the date of the agreement with such third party to pay such higher royalty rate.

COPYRIGHT NOTICE: © 1983 James A. Hendrix

INITIAL. ON-SALE DATE: _____

LICENSOR PRICE FOR LICENSED PRODUCT:
Novelty Buttons-15 "Hipster"-$1.00

This agreement includes the Terms and Conditions on the pages attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first above written

("Licensor")	("Licensee")
By /s/ James A. Hendrix Jimi Hendrix	By /s/ [Illegible] Personalities, Inc.

TERMS AND CONDITIONS

1. Licensor hereinafter grants Licensee and Licensee hereby accepts the non-exclusive right to utilize the Licensed Property in connection with the manufacture, advertisement, distribution, and sale of Licensed Products in the Licensed Area during the Licensed Term. All other rights with respect to the Licensed Property are hereby expressly reserved.

2. For the license granted herein, Licensee will pay Licensor as follows:

(a) The Royalty Rate shall be applicable to Licensee's gross selling price of all Licensed Products delivered or shipped, without deduction of any costs or expenses incurred in the manufacture, advertisement, distribution, or sale thereof, or from uncollectible accounts. Royalties due for each calendar quarter after the date hereof shall be paid to Licensor within fifteen (15) days after the last day thereof.

(b) The advance against royalties shall be paid to Licensor upon execution hereof and shall not be returnable in whole or in part to Licensee.

(c) Licensee shall pay Licensor the Guaranteed Minimum Payment, less such advance payment and royalty payments paid by Licensee to Licensor with the last quarterly statement due hereunder. Notwithstanding the above, if the term of this agreement is for two (2) years, the difference between royalties earned and the Guaranteed Minimum Payment (or if royalties earned are less than the advance, then the difference between the advance and the Guaranteed Minimum Payment) shall be payable with the fourth statement due hereunder.

(d) Concurrently with each payment of royalties pursuant to sub-paragraph (a) above, Licensee shall furnish Licensor with a complete and accurate royalty statement (hereinafter "Statement"), certified as to accuracy by Licensee or by an officer of Licensee if Licensee is a corporation, specifying the quantity sold, gross selling price, and purchaser of the Licensed Products. Licensee shall furnish such Statement to Licensor whether or not any Licensed Products have been sold during the month to which a particular Statement refers. Licensee shall use such statement form(s) as Licensor shall provide or approve. Licensee shall, at its own expense and upon demand by Licensor, but not-more than once per year, furnish Licensor with a notary affidavit attesting to the accuracy of Licensee's statements regarding ~~detailed statement prepared by an independent, certified public accountant, specifying~~ the quantity sold, sales price, ~~and purchaser~~ of the Licensed Products up to the date of Licensor's demand.

(e) All payments made to Licensor shall be in United States currency. Time is of the essence with respect to all payments due Licensor. Interest at the rate of one and one-half percent (1-1/2%) per month shall accrue on any amount due Licensor from. and after the date upon which said payment is due, until the date said payment is actually made. Licensor's receipt or acceptance of any Statement or royalty paid pursuant to this agreement (or the cashing of any check or draft constituting payment of any royalty) shall not preclude it from questioning the correctness thereof at any time, and in the event any inconsistencies or mistakes are discovered in any Statement or royalty payment, Licensee shall immediately rectify such inconsistencies or mistakes and pay the appropriate royalty to Licensor.

(f) Licensee shall keep, maintain, and preserve at its principal place of business accurate books of account and records covering all transactions relating to the license granted herein and this agreement. Licensor and its duly authorized representative shall have the right at all reasonable hours of the day and upon reasonable notice to Licensee to examine said books of account, records, and all other documents and material in the possession or under the control of Licensee with respect to the subject matter and the terms of this agreement, and shall have free and full access thereto to examine and make extracts and copies therefrom. Licensee shall keep all such books of account and records available for at least two (2) years subsequent to the date of expiration of the Licensed Term, and Licensor and its duly authorized representative shall have the right to examine such books of account and records during such period of two (2) years. In the event there are errors of more than ten percent (10%) to Licensor's disadvantage, Licensee will pay auditing costs.

3. (a) Licensee shall, at its expense and prior to its manufacture, distribution, or sale of the Licensed Products, submit a prototype sample of each of the Licensed Products to Licensor, together with any packaging, container, carton, enclosed material, tag, label, wrapping, advertising, or promotional material for use in any media (hereinafter "Packaging") which will be associated in any manner with or used to promote the Licensed Products. Licensee shall not commence the manufacture, distribution, or sale of Licensed Products unless and until Licensor shall have approved the artwork, design, quality, and style of the Licensed Products and the Packaging in writing. Licensor shall endeavor to provide Licensee with written approval or disapproval of the Licensed

Products and Packaging as promptly as is reasonably possible.

(b) Licensee shall not, after having received Licensor's written approval of the Licensed Products and Packaging pursuant to the provisions of subparagraph (a) above, cause or permit any deviation or variation in the artwork, design, quality, or style of the Licensed Products or Packaging without Licensor's approval in writing prior to any such deviation or variation. Licensor shall own all copyrights in the Licensed Products and Packaging. Licensor shall have no obligation to register any copyrights.

(c) Licensee agrees to periodically give written notice of and inform all persons, firms, or corporations to which it distributes Licensed Products as to the appropriate copyright notice(s) to be used in connection with advertising, promotion, display, and sale of Licensed Products.

4. Promptly after initial shipment of each of the Licensed Products, Licensee will so notify Licensor and furnish Licensor with fifty (50) free samples of each of such Licensed Products. During the continuance of this agreement, Licensee shall:

(a) permit access by a representative selected by Licensor to Licensee's floor stock for sampling purposes at any time during normal business hours without advance notice;

(b) furnish Licensor within fifteen (15 s after receipt of written request therefor with further samples not to exceed twenty-five (25) of each of the Licensed Products then being sold by it and as packaged for shipment by it, it being understood that Licensee shall not be obligated to furnish such sam-

ples free of charge more than once in any calendar quarter; and

(c) sell additional quantities of Licensed Products to Licensor at the lowest price charged any third party upon receipt of written request therefor or at the price set out on page 1, if any, whichever is lower.

5. As used in this agreement, the term "Licensed Property" means each of the elements specified on page 1 hereof individually and all such elements associated therewith, the Licensed Property having a secondary meaning in the mind of the public. Licensee acknowledges that the Licensed Property (including all rights therein and goodwill associated therewith) shall, as between Licensee and Licensor, be and remain the exclusive and complete property of Licensor. Licensor reserves the right to lease, authorize, or permit use of the Licensed Property by third parties, as it may see fit.

Licensee will not use or authorize use of the Licensed Property in any manner, at any time, or in any place not specifically licensed herein.

6.(a) Licensee represents and warrants that the Licensed Products will be: (i) of a high standard in style, appearance, and quality; (ii) manufactured, advertised, distributed, and sold in accordance with all applicable federal, state, and local laws and in a manner which will not reflect adversely upon Licensor or-those with whom it has contractual arrangements with respect to the Licensed Property; and (iii) diligently advertised and distributed throughout the Licensed Area. Licensee also warrants it use its best efforts to obtain maximum sale thereof in the Licensed Area during the Licensed Term.

(b) Licensee shall distribute and sell the Licensed Products outright, not on an approval, consignment, sale, or return basis, and only to jobbers, wholesalers, and distributors for distribution and sale to retail stores, and to retail stores for sale to the public. Without the express, prior, written consent of Licensor, Licensee shall not knowingly distribute or sell the Licensed Products to distributors, wholesalers, jobbers, sponsors of a radio or television program, or retail stores or merchants whose sales or distribution are or will be made for publicity or promotional tie-in purposes, combination sales, premiums, giveaways, at concert sites or to persons who will sell at concert sites, or similar means of merchandising or whose business methods and practices are questionable. If Licensee distributes or sells any Licensed Products at a special price to any of its subsidiaries or to any other person, firm, or corporation related in any manner to it or its officers, directors, or major stockholders, it shall pay a royalty on such sale based upon the price generally and customarily charged the trade by it. Licensee may not distribute and/or sell directly to consumers through mail order or any other method.

(c) Licensor reserves the right to manufacture, distribute, and sell or grant to others the right to manufacture, distribute, and sell the Licensed Products in connection with a direct mail offer, premium giveaway, self-liquidator, commercial tie-in, fan club, and/or promotion of and/or sale and/or distribution of merchandise at Artist's concerts and live performances.

Licensee shall not offer for sale, advertise, or publicize any Licensed Products via television, radio, newspapers, magazines, or any other media without

Licensor's prior written approval in each instance, which approval may be granted or withheld by Licensor at its sole discretion.

(d) Licensee shall not enter into any sub-license or agreement for the manufacture, distribution, or sale of Licensed Products. Licensee shall not have the Licensed Products manufactured for it by a third party unless it first obtains Licensor's written approval and unless said third party enters into an agreement with Licensor on its usual form for such agreements not to supply the Licensed Products to anyone other than Licensee. Any attempt by Licensee to grant sub-licenses or to assign or part with possession or control of the license granted pursuant to this agreement or any of its rights under this agreement shall constitute a material breach of this agreement.

7. (a) "Notice" as used in this paragraph shall mean the copyright and/or trademark notice and/or appropriate notice of registration, application for registration, or use of any licensed trademark or service mark.

(b) Licensee shall print, stamp, or mold the notice on all Licensed Products and each package or container used in connection therewith and on each label, advertisement, and promotional release concerning any Licensed Products, all in accordance with instructions from Licensor, including without limitation instructions with respect to position and letter size. No Licensed Products or any package, container, label, advertisement, or promotional release upon which the notice is printed, stamped, or molded pursuant to the preceding sentence shall contain any other copyright notice whatsoever unless Licensor has given Licensee prior written consent thereto.

Licensor may at any time and from time to time change the notice, effective not less than thirty (30) days after receipt by Licensee of notice of such change. ~~Licensee shall, at its own expense, take all steps necessary to secure world-wide copyright protection for the Licensed Products (including but not limited to steps under the United States Copyright Act and Universal Copyright Convention) in the name of Licensor, and shall deliver to Licensor all the copyright registration certificates issued therefore, together with a facsimile of the registered material within one (1) month after initial sale of any Licensed Products to the general public, and Licensor may require Licensee to secure similar copyright for any label, package, container, advertisement, or promotional release used in connection with any Licensed Products.~~ Licensor shall cooperate fully with Licensee in connection with Licensee's obtaining copyright protection in the name or Licensor or in the name of a copyright proprietor other than Licensor or Licensee. Licensor may similarly require Licensee to register any Licensed Products or any labels, packages, containers, advertisements, or promotional releases in connection therewith as trademarks and/or service marks in the appropriate class in the name of Licensor. In the event that the copyright notice is changed during the Licensed Term, Licensee may sell off existing inventory which has been marked with the previous copyright notice.

(c) Licensee acknowledges and agrees that: (i) all copyrights, trademarks, service marks, and the rights to same referred to in sub-paragraph (b) above in the name of and/or owned by Licensor shall be and remain the sole and complete property of Licensor; (ii) all such copyrights, trademarks, service marks, and the rights to same in the name or or owned by

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any copyright proprietor other than Licensor or Licensee shall be and remain the sole and complete property of such copyright proprietor; (iii) all trademarks and service marks and/or the right to use same which arise out of the license hereby granted to use the License Property shall be and remain the sole and complete property of Licensor; (iv) Licensee shall not at any time acquire or claim any right, title, or interest of any nature whatsoever in any such copyright, trademark, or service mark by virtue of this agreement or its uses thereof in connection with the Licensed Products; and (v) any right, title, or interest in or relating to any such copyright, trademark, or service mark which comes into existence as a result or during the term of the exercise by Licensee of any right granted it hereunder shall immediately vest in Licensor. Licensee acknowledges the validity of all such copyrights, trademarks, or service marks, and agrees never to contest or assist others in contesting the validity thereof.

8. Licensee agrees to reasonably assist Licensor to the extent necessary in the procurement of any protection or to protect of any of Licensor's rights to the Licensed Property, and Licensor may, if it so desires, commence or prosecute any claims or suits in its own name or in the name of Licensee or join Licensee as a party thereto. Each party shall notify the other in writing of any infringements or imitations by others of the Licensed Property on articles similar to those covered by this agreement which may come to its attention, and Licensor shall have the sole right to determine whether or not any action shall be taken on account of any such infringements or imitations.' Licensee shall not institute any suit or take any action on account of any such infringements

or imitations without first obtaining written consent of Licensor.

9. (a) Licensor warrants and represents that: (i) it is free to enter into and fully perform this agreement; and (ii) all ideas, creations, materials, and intellectual property furnished by 'it in connection with the Licensed Property will be its own and original creation (except for matters in the Public domain or material which it is fully licensed to use). Licensor will at all times indemnify and hold Licensee harmless from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of any breach by Licensor of any representation, warranty, or agreement made by it herein, provided that Licensee shall notify Licensor in writing promptly upon its acquisition of knowledge of any such claim or suit ~~and that such indemnity shall not exceed the value of royalties accrued or advances paid to Licensor, whichever is greater. Te above warranty shall apply only to judgments and settlements entered into with Licensor's consent in writing, which shall not be unreasonably withheld~~. Licensor shall, at any time prior to judgment, have the option of undertaking and conducting the defense of any claim or suit which may be subject to the indemnification provisions of this paragraph. Licensee shall not enter into any settlement of any claim or suit which may be subject to the indemnification provisions of this paragraph without Licensor's express consent in writing.

(b) Licensee hereby indemnifies and agrees to hold Licensor harmless from: (i) any claims or suits arising out of any alleged defects in the Licensed Products; (ii) the unauthorized use of any patent, process, method, or device, infringement of any

copyright, trade name, patent, libel, or invasion of the rights of privacy or publicity or other property right; except those supplied by Licensor (iii) failure to perform; or (iv) infringement or breach of any other personal or property right of any person, firm, or corporation by Licensee, its officers, employees, agents, or anyone directly or indirectly acting by, through, on behalf of, pursuant to contractual agreement or any other relationship with Licensee in connection with the preparation, manufacture, distribution, advertising, promotion, and/or sale of Licensed Products and/or any material relating thereto and/or naming or referring to any performers, personnel, marks, and/or elements. With respect to the foregoing indemnification, Licensee, shall defend and hold Licensor, its respective subsidiaries and affiliates, and its employees and agents harmless at no cost and expense to them whatsoever, including but not limited to attorneys' fees and court costs. Licensor shall have the right to defend any such action or proceeding with attorneys of its own selection. Licensee hereby agrees it shall indemnify and forever hold Licensor, its respective subsidiaries and affiliates, and its employees and agents harmless against and from any and all claims (whether justified or unjustified), costs, liabilities, judgments, damages, and expenses, including without limitation reasonable attorneys' fees arising out of any breach or alleged breach by Licensee of any provision of this agreement or any misrepresentation made by Licensee herein or any act not expressly authorized by this agreement.

10. (a) Licensee shall, at its sole cost and expense throughout the Licensed Term and the disposal period, obtain and maintain standard product liability insurance, the form of which must be accept-

able to Licensor, from a qualified insurance company licensed to do business in the State of California, naming Licensor, its respective subsidiaries and affiliates, and its employees and agents as-additional named insureds, which policy shall provide protection against any and all claims, demands, and causes of action arising out of any defects or failure to perform, alleged or otherwise, in the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be a minimum of One Million Dollars ($1,000,000) combined, single limit for each single occurrence for bodily injury, and One Hundred Thousand Dollars ($100,000) for property damage. Said policy shall provide for ten (10) days' notice to Licensor from the insurer by registered or certified mail, return receipt requested, in the event of any modification, cancellation, or termination of said policy. Licensee shall furnish Licensor with a certified copy of said policy providing such coverage within thirty (30) days after the date of this agreement, and in no event shall Licensee manufacture, distribute, or sell Licensed. Products prior to receipt by Licensor of such evidence of insurance.

~~(b) Licensee shall, at its cost and expense throughout the Licensed Term and the disposal period, obtain and maintain standard advertiser's liability insurance, the form of which must be acceptable to Licensor, from a qualified insurance company licensed to do business in the State of California, naming Licensor, its respective subsidiaries and affiliates, and its employees and agents as additional named insureds. The amount and coverage shall be a minimum of Five Hundred Thoudans Dollars/One Million Dollars ($500,000/$1,000,000). Said policy shall provide for ten (10) days notice to Licensor from the insurer by registered or certified~~

~~mail, return receipt requested, in the event of an modification, cancellation, or termination of said policy. Licensee shall furnish Licensor with a certified copy of said policy providing such coverage within thirty (30) days after the date of this agreement, and in no event shall Licensee manufacture, distribute, or sell Licensed Products prior to receipt by Licensor of such evidence of insurance.~~

11.(a) In the event Licensee fails to: (i) place the Licensed Products on sale to the general public on or before the initial on-sale date; (ii) actively manufacture, advertise, distribute, or sell the Licensed Products throughout the Licensed Area; (iii) sell any Licensed Products during any two consecutive calendar quarters; (iv) make any payment or furnish any Statement in accordance herewith (time is of the essence with respect to Statements and payments) ; (v) comply with any other of its obligations hereunder, or in the event a voluntary petition in bankruptcy is filed by Licensee or an involuntary petition in bankruptcy is filed against Licensee and not dismissed within thirty (30) days thereafter or Licensee takes advantage of any insolvency law, then in any of such events, Licensor shall have the right, at its option and in addition to any other right of any nature it may have at law or in equity, to do any or all of the following: (i) terminate this agreement; (ii) delete from the operation of this agreement any elements(s) of the Licensed Property or any Licensed Products; (iii) require immediate payment of all royalties then due or becoming due hereunder, all upon written notice to Licensee.

(b) In the event Licensee is prevented from manufacturing or distributing the Licensed Products because of any act of God, unavoidable accident, fire,

epidemic, strike, lockout or other labor dispute, war, riot or civil. commotion, act of public enemy, enactment, rule, order or act of government or governmental instrumentality (whether federal, state, local, or foreign), or other cause of a similar or dissimilar nature beyond Licensee's entire control, and such condition continues for a period of three (3) months or more, either party hereto shall have the right to terminate this agreement, effective at any time during the continuation of such condition by giving the other party at least thirty (30) days' notice to such effect.

12. Upon expiration or termination of this agreement, all rights granted Licensee shall forthwith revert to Licensor, with the following consequences:

(a) Licensor shall thereafter be free to license others to use the Licensed Property in connection with the manufacture, advertisement, distribution, and sale of items identical or similar to the Licensed Products in the Licensed Area.

(b)(i) Licensee shall not thereafter manufacture, advertise, distribute, or sell Licensed Products in any place whatsoever, except that in the event of the expiration of this agreement on the last day of the Licensed Term hereof or the termination of this agreement pursuant to any provision of paragraph 12 hereof, Licensee may continue to sell any Licensed Products previously manufactured and on hand on a non-exclusive basis during a period of sixty (60) days after expiration of the Licensed Term, in accordance with all the terms and conditions contained in this agreement and at prices which shall not, except with Licensor's prior written consent, be lower than the prevailing, wholesale price(s) charged by Licensee during the period of ninety (90) days immediately

preceding such expiration or termination. Licensee must ship said goods previously manufactured within the period of sixty (60) days referred to in this paragraph. During such sell-off, Licensee may not sell Licensed Products pursuant to this paragraph to affiliated or related companies or to its officers and/or directors.

(ii) In lieu of allowing Licensee to exercise the sell-off described above, Licensor shall have the right to buy back all Licensed Products previously manufactured and on hand at Licensee's cost. In such event, Licensor shall communicate its desire to exercise such right by written notice to Licensee after receipt of the inventory described in sub-paragraph (iv) below;

(iii) Notwithstanding anything to the contrary contained herein, Licensee shall not manufacture, sell, or dispose of any articles covered by this license after its expiration or termination based on the failure of Licensee to affix notice of copyright, trademark, or service mark registration or any other notice to the articles, cartons, containers, packaging, wrapping, or advertising, promotional, or display material, or because of Licensee's departure from the quality and style approved by Licensor pursuant to paragraphs 3 and 6 herein.

(iv) Sixty (60) days prior to the date of expiration of the Licensed Term or ten (10) days after the effective date of termination of the license prior to expiration date of the Licensed Term, Licensee shall account to Licensor in a statement indicating the number and description of Licensed Products it or its manufacturer has on hand or is in the process of manufacturing as of the date of said statement. Licensor shall have the option of conducting a physi-

cal inventory at Licensor's cost of Licensee or its manufacturer in order to verify such statement of remaining inventory. If Licensee does not supply the statement of inventory and work in process or refuses to permit Licensor to conduct such physical inventory, Licensee shall forfeit its rights to dispose of any Licensed Products subsequent to the date of expiration of the Licensed Term or the effective date of any termination pursuant to the provisions of this paragraph. During the last sixty (60) days of the Licensed Term, Licensee shall not manufacture more than one hundred ten percent (110%) of the goods manufactured in the previous one hundred twenty (120) days (divided in half) without Licensor's written consent. Nothing contained in this paragraph shall be construed to limit Licensor's rights or remedies.

(c) Licensee acknowledges that its failure (except as otherwise provided herein) to cease the manufacture, sale, or distribution of Licensed Products or any class or category thereof upon the expiration or termination of this agreement will result in immediate and irreparable damage to. Licensor and to the rights of any subsequent licensee. Licensee acknowledges and admits that there is no adequate remedy at law for such failure to cease manufacture, sale, or distribution, and agrees that in the event of such failure, Licensor shall be entitled to equitable relief by way of temporary and permanent injunction and such other and further relief as any court with competent jurisdiction may deem just and proper.

(d) Licensee shall, upon expiration or termination of the license, turn over to Licensor all molds and other materials which reproduce the Licensed Products or give Licensor satisfactory evidence of the destruction of said molds and other materials. Licen-

see shall be responsible to Licensor for any damage caused by unauthorized use by Licensee or others of such molds or materials of reproduction which are not turned over or destroyed.

(e) With respect to inventory and/or work in progress at expiration of the Licensed Term, any renewal term, or a sell-off period as set out in paragraph 12(b)(i) above as permitted by this agreement, such inventory shall first be offered for sale in writing to Licensor at Licensee's cost, and if Licensor declines such offer, such inventory shall be destroyed within seven (7) days thereafter, an affidavit of destruction signed by an officer of Licensee being sent to Licensor within seven (7) days after such destruction.

(f) Licensee shall stamp out, cross out, or eliminate any identification of Licensor, the Licensed Property, and the Licensed Products in any of its catalogs, so that it is obvious to the reader such merchandise is no longer for sale; Licensee shall reprint its catalog within six (6) months of the termination date hereunder without any reference to Licensor, the Licensed Property, or the Licensed Products.

13.(a) Any attempted or purported assignment or other transfer, sub-license, mortgage, or other encumbrances of this agreement by Licensee without prior written approval of Licensor shall be void and of no effect. Licensor may assign this agreement in whole or in part but shall furnish written notice of any such assignment to Licensee.

(b) Nothing herein contained shall be construed to constitute a partnership or joint venture between the parties hereto, and neither party shall become

bound by any representation, act, or omission of the other. Licensee is an independent contractor in the manufacture, advertisement, sale, and distribution of Licensed Products, and Licensee will pay all sales taxes and other charges imposed on either party by any law, ordinance, or requirement of any government or governmental instrumentality (whether federal, state, local, or foreign) in connection therewith.

(c) A waiver by either party of any term of con dition of this agreement in any instance shall not be deemed or construed to be a waiver of such term or condition in the future or any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative, and none shall be in limitation of any other remedies, rights, undertakings, obligations, or agreements of either party.

(d) All notices required or desired to be given hereunder shall be given in writing by personal delivery, mail, or telegram at the respective addresses of the parties herein or at such other address(es) as may be designated by registered or certified mail sent by either party hereto to the other. Notice given by mail or telegram shall be deemed given on the date of mailing thereof or of delivery to a telegraph office, charges prepaid.

(e) This agreement and all matters or issues collateral thereto shall be governed by the laws of the State of California applicable to contracts performed entirely therein. The entire understanding between the parties hereto relating to the subject matter hereof is contained herein, and no warranties, representations, or undertakings are made by the parties hereto except as expressly provided herein. This agreement cannot be changed or terminated orally.

(f) If any legal action or other proceeding is brought for enforcement of this agreement or as a result of a breach, default, or misrepresentation in connection with any of the provisions of this agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding in addition to any other relief to which such party may be entitled.

(g) Any dispute under or relating to the terms of this agreement or the breach thereof shall be submitted for arbitration to the American Arbitration Association in San Francisco in accordance with the rules promulgated by said Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

14. Licensor shall own any-and all rights throughout the world including, without limitation, any copyrights, in and to any and all designs created by Licensee and utilized by Licensee in connection with the manufacture, distribution, marketing or sale of Licensed Products embodying the Licensed Property.

[LOGO]
Winterland Productions

June 24, 1983

Mr. Leo Branton, Jr.
1901 Avenue of the Stars
Suite 520
Los Angeles, CA 90067

Dean Leo:

Yes, we are settling with another bootlegger. Enclosed please find the following material from R&B Discovers dba Personalities, Inc.:

1. Four copies of a settlement agreement between R&B and James A. Hendrix. Assuming everything appears in order, please return to my attention three fully-executed copies. The fourth is for your files.

2. Samples of the unlicensed buttons which were bootlegged by R&B.

Please call if you have any questions.

Sincerely,

/s/ Mark Coopersmith
MARK COOPERSMITH
Licensing Director

Encl.

MC:mt

EXHIBIT 11

[LOGO]
Winterland Productions

April 12, 1984

Mr. Leo Branton, Jr.
1901 Avenue of the Stars
Suite 520
Los Angeles, CA 90067

Dear Leo:

Enclosed please find four copies of a settlement agreement between Ultra Graphics and the Estate of Jimi Hendrix. Ultra Graphics is offering $1,079.82 as settlement for the production and sale of 5,142 unlicensed Jimi Hendrix concert art posters. This equates to a settlement of $0.21 per poster; this settlement rate ($0.21 each) is at a favored nations rate for all groups which Ultra Graphics has settled with to date.

Assuming the enclosed meets with your approval, please execute and return to me three fully executed copies of this settlement agreement.

Sincerely,

/s/ Mark Coopersmith
Mark Coopersmith
Licensing Director

Encls.

MC/cjb

SETTLEMENT AGREEMENT

THIS AGREEMENT made this 2nd day of April 1984, by and between the ESTATE OF JIM HENDRIX, c/o Winterland Productions, 890 Tennessee Street, San Francisco, California 94107 (hereinafter "Proprietor"), and ULTRA GRAPHICS, INC. , P.O. Box 92, Carmel, IN 46032 (hereinafter "Ultra"), is made with reference to the following facts:

A. Proprietor is the owner of the rights to the names, likenesses, logos, trademarks, service marks, designs, symbols, appearances, and colorable variations (hereinafter "Licensed Property") of the popular entertainer or musical group and the individual members thereof set out on Exhibit "A" attached hereto (hereinafter "Artists").

B. A dispute (hereinafter "Dispute") has arisen between Proprietor and Ultra with respect to Ultra's alleged purchase and/or distribution and/or sale of unauthorized and unlicensed merchandise utilizing Artist' s Licensed Property.

C. The parties wish to resolve this dispute amicably.

NOW, THEREFORE, the parties agree as follows:

1. Ultra, its officers, agents, servants, employees, attorneys, and all those persons acting in concert or participation with them, shall cease and desist and agree to cease and desist, absent written permission from the owner of the rights involved, from manufacturing, printing, distributing, selling, holding for sale, offering for sale, or otherwise commercially exploiting or advertising in any manner unlicensed merchandise, including but not limited to T-shirts, jerseys, hats, buttons, patches, stickers, enamel pins,

pendants, posters, key chains, calendars, mirrors, cigarette lighters, stash boxes, book covers, clocks, belt buckles, belts, jewelry, and any other article of clothing or tangible object, product, commodity, or item bearing Artist's Licensed Property.

2. Attached hereto as Exhibit "B" is a statement of gross sales for Artist, represented by Ultra under penalty of perjury as a true and complete statement of the merchandise sales embodying Artist's Licensed Property, and Ultra warrants and represents it has not manufactured merchandise in excess of that set out on Exhibit "B".

Ultra shall pay Proprietor the sum of $1,079.82.

4. (a) Each of the above parties, on behalf of himself, his descendants, ancestors, dependents, heirs, executors, administrators, assigns, agents, servants, stockholders, employees, representatives, and successors fully releases and discharges the other party from any and all rights, claims, and actions such party now has arising out of the Dispute or may hereafter have against the other.

(b) In addition, this agreement constitutes a stipulation to entry of preliminary and permanent injunctions against Ultra in any court of competent jurisdiction should it violate this agreement in any manner.

ESTATE OF JIMI HENDRIX
("Proprietor)

By /s/ Mr. Leo Branton, Jr.

ULTRA GRAPHICS INC.
By /s/ [Illegible]

EXHIBIT "A"

Artist

JIMI HENDRIX

EXHIBIT "B"

Concert Art Unit Sales Through 3/31/84

Artist	Total Sales
Adam Ant	20,262
Pat Benatar	3,302
Doors	10,368
Fleetwood Mac	1,997
Go Go's	1,603
Grateful Dead	9,993
Jimi Hendrix	5,149
Jefferson Starship	475
Lynyrd Skynyrd	5,829
Ted Nugent	751
Ozzy Osbourne	6,963
Tom Petty	1,439
Pink Floyd	10,326
Police	25,409
Quarterflash	1,075
REO Speedwagon	453
Santana	491
Bob Seger	1,609
Bruce Springsteen	6,689
Styx	3,666
Eurythmics	8,019

EXHIBIT 12

LEO BRANTON, Jr.
ATTORNEY AT LAW
1901 AVENUE OF THE STARS, SUITE 520
LOS ANGELES. CALIFORNIA 90067
TELEPHONE (213) 277-8111

February 4, 1985

High Ridge Productions, Inc.
c/o Rear View Inc.
6536 Sunset Boulevard
Hollywood, California 90028

Attention: Vicki Grimsland
Clearance Administrator

RE: THE BEACH BOYS: AN AMERICAN BAND

Dear Vicki:

I am enclosing herewith the redraft of the consent and permission for the use of the Hendrix performance from "Monterey Pop" in "The Beach Boys: An American Band".

Very truly yours,

Leo Branton, Jr.
LB/mc
Enclosure

February 4, 1985

High Ridge Productions, Inc.
c/o Rear View Inc.
6536 Sunset Boulevard
Hollywood, California 90028

RE: THE BEACH BOYS: AN AMERICAN BAND

Gentlemen:

I, the undersigned, do hereby consent to the use of excerpts including the name, image, voice and performance from the film described below in and in connection with the documentary film entitled "THE BEACH BOYS: AN AMERICAN BAND, and for no other purpose, as it shall be distributed and broadcast in all media throughout the world, in perpetuity, and in the advertising and publicizing thereof. This grant does not include the right to utilization of the film footage. I understand you have acquired these rights from others.

I hereby acknowledge that you may be utilizing the aforementioned excerpts in such documentary film, and that you are acting in reliance upon this release and grant of rights.

PRODUCTIONS (S): "Monterey Pop": – Twenty seconds (:20) of Jimi Hendrix performing on stage.

Very truly yours,

James A. Hendrix

by /s/ Leo Branton, Jr.
Authorized signature

I represent that I have the full authority to execute this agreement and sign on behalf of James A.

Hendrix, sole heir to the Estate of Jimi Hendrix, deceased. I agree to defend, indemnify and hold you harmless from and against any and all losses, costs, expenses and damages (including reasonable attorneys' fees) arising out of, or in connection with the breach of foregoing representation.

By Leo Branton, Jr.
Authorized signature of behalf of James A. Hendrix

EXHIBIT 13

LEO BRANTON, Jr.
A LAW CORPORATION
3460 WILSHIRE BOULEVARD, SUITE 410
LOS ANGELES. CALIFORNIA 90010
TELEPHONE (213) 384-4411

July 16, 1986

Mr. Jim Dunlop
Dunlop Manufacturing, Inc.
Box 846
Benicia, California 94510

Re: Jimi Hendrix Wah Wah Pedal

Dear Mr. Dunlop:

I have modified the agreement previously sent to me to change the name of the licensing party from Are You Experienced Ltd to Mr. James A. Hendrix. Are You Experienced is the company that creates Hendrix product for exploitation such as records, film, etc., etc., but the right to exploit the Jimi Hendrix name actually belongs to his father, Mr. James A. Hendrix whom I represent.

I have signed the agreement on behalf of Mr. Hendrix and am enclosing it herewith. Alan Douglas is aware of this and understands it completely.

I hope you have great success in sales.

Very truly yours,

/s/ Leo Branton, Jr.
Leo Branton, Jr.

LB: eah

cc: Alan Douglas (Are You Experienced)

TRADEMARK/COPYRIGHT LICENSING AGREEMENT

This agreement is made on the first day of June 1986 between JAMES A. HENDRIX C/O LEO BRANTON, JR., 3460 Wilshire Boulevard, Suite 410, Los Angeles, Calif. 90048 and DUNLOP MANUFACTURING INC., 150 Industrial Way, Benicia, Calif. 94510.

WHEREAS JAMES A. HENDRIX is the owner of certain trademarks/ copyrights pertaining to the name JIMI HENDRIX and DUNLOP MANUFACTURING INC. wishes to represent the Crybaby pedal as the ORIGINAL JIMI HENDRIX WAH WAH.

For this right DUNLOP MANUFACTURING INC. will pay to JAMES A. HENDRIX the sum of ____ per pedal manufactured under this name. This payment will be made at the beginning of each production run of one thousand pedals (1000).

The pedals shall have the series number JH-1 in the DUNLOP MANUFACTURING INC. accounting system and DUNLOP MANUFACTURING INC. shall present a monthly statement of sales to JAMES A. HENDRIX.

DUNLOP MANUFACTURING INC. shall allow a representative from JAMES A. HENDRIX being a fully certified public accountant in the State of California to audit the records of DUNLOP MANUFACTURING INC. pertaining to this particular item at any time following notification of at least two days.

ACCEPTED AND AGREED

For JAMES A. HENDRIX
c/o Leo Branton, Jr.
3460 Wilshire Boulevard
Suite 410
Los Angeles, California 90010

/s/ James A. Hendrix
TITLE /s/ Leo Branton, Jr.

For Dunlop Manufacturing Inc.
150 Industrial Way
Benicia, California 94510

/s/ [Illegible]
TITLE: President

EXHIBIT 14

MICHAEL L. KRASSNER
A Professional Corporation
Attorneys at Law
100 Harrison Street, Second Floor
San Francisco, California 94105-1605

VIA MESSENGER

Leo Branton, Esq.
3460 Wilshire Boulevard
Suite 410
Los Angeles, CA 90010

Re: Winterland Productions/
Jimi Hendrix

Dear Leo:

Enclosed please find copies of the correspondence between Winterland and Portal Publications regarding infringing merchandise.

Please inform us as to any relevant information you may have which bears on Portal's statements regarding the photographer. We believe his name is Jim Marshall.

Very truly yours,

/s/ Karen
Karen L. Witte

KLW/olj
Enc.

MICHAEL L. KRASSNER
A Professional Corporation
Attorneys at Law
100 Harrison Street, Second Floor
San Francisco, California 94105-1605

CERTIFIED MAIL

Portal Publications, Ltd.
770 Tamalpais
Corte Madera, CA 94925

Gentlemen:

This office represents Winterland Productions.

It has come to our attention that you have been manufacturing and/or distributing and/or selling unauthorized, bootleg posters embodying the names, likenesses, trademarks, copyrighted art works, symbols, designs, and/or logos of JIMI HENDRIX and JIM MORRISON, whose merchandising rights have been licensed to my client.

This illicit business activity may provide a basis for claims for relief in the judicial setting, based on false descriptions of origin in violation of the Lanham Act, infringement of trademarks or service marks, infringement of copyrights in violation of the Copyright Act of 1909 and the Copyright Act of 1976, deceptive trade practices, misappropriation and misuse of distinctive names and trademarks, interference with contractual relations, invasion of privacy and right of publicity, and may subject your company to preliminary and permanent injunctive relief and substantial damages. Please take special note of Section 990 of the California Civil Code, a copy of which is attached hereto.

You are hereby notified that it is our intention to recommend that litigation be commenced at once against your company unless you agree as follows within ten (10) days of the date hereof:

1. to provide Winterland with an affidavit in which you represent that you will immediately cease and desist as of the date thereof from all manufacture, distribution; sale, commercial exploitation, and advertising with respect to such products, and further providing for entry of injunctive relief against your company in the event said representation is breached;

2. to turn over for destruction all such products representing inventory on hand;

3. to provide my client with the purchase orders (or other evidence of source of supply), sales, earnings, and other financial information pertaining to the commercial exploitation of such products; and

4. to make restitution in an amount to be mutually agreed upon after we have had an opportunity to review the financial information you provide.

In order to facilitate resolution of this matter, please forward to this office two (2) samples of each article utilizing my client's name or logo and any catalog(s) advertising same.

This letter is written without prejudice to any of my client's rights and remedies, all of which are specifically and expressly reserved.

I look forward to hearing from you.

Sincerely,

/s/ Karen L. Witte
KAREN L. WITTE

§990. Deceased Personality's Name, Voice, Signature, Photograph, or Likeness in Advertising or Soliciting.

(a) Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subdivision (c), shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars ($750) or the actual damages suffered by the injured, party or parties, as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated the section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party or parties in any action under this section shall also be entitled to attorneys' fees and costs.

(b) The rights recognized under this section are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether the transfer occurs before the death of the deceased personality, by the deceased personal-

ity or his or her transferees, or, after the death of the deceased personality, by the person or persons in whom such rights vest under this section or the transferees of that person or persons.

(c) The consent required by this section shall be exercisable by the person or persons to whom such right of consent (or portion thereof) has been transferred in accordance with subdivision (b), or if no such transfer has occurred, then by the person or persons to whom such right of consent (or portion thereof) has passed in accordance with subdivision (d).

(d) Subject to subdivisions (b) and (c), after the death of any person, the rights under this section shall belong to the following person or persons and may be exercised, on behalf of and for the benefit of all of those persons, by those persons who, in the aggregate, are entitled to more than a one-half interest in such rights:

(1) The entire interest in those rights belong to the surviving spouse of the deceased personality unless there are any surviving children or grandchildren of the deceased personality, in which case one-half of the entire interest in those rights belong to the surviving spouse.

(2) The entire interest in those rights belong to the surviving children of the deceased personality and to the surviving children of any dead child of the deceased personality unless the deceased personality has a surviving spouse, in which case the ownership of a one-half interest in rights is divided among the surviving children and grandchildren.

(3) If there is no surviving spouse, and no surviving children or grandchildren, then the entire interest in

those rights belong to the surviving parent or parents of the deceased personality.

(4) The rights of the deceased personality's children and grandchildren are in all cases divided among them and exercisable on a per stirpes basis according to the number of the deceased personality's children represented; the share of the children of a dead child of a deceased personality can be exercised only by the action of a majority of them. For the purposes of this section, "per stirpes" is defined as it is defined in Section 240 of the Probate Code.

(e) If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary document, and there are no surviving persons as described in subdivision (d), then the rights set forth in sub-, division (a) shall terminate.

(f)(1) A successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may not recover damages for a use prohibited by this section that occurs before the successor-in-interest or licensee registers a claim of the rights under paragraph (2).

(2) Any person claiming to be a successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the Secretary of State on a form prescribed by the Secretary of State and upon payment of a fee of ten dollars ($10). The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

(3) Upon receipt and after filing of any document under this section, the Secretary. of State may micro-

film or reproduce by other techniques any of the filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law. The microfilm or other reproduction of any document maybe destroyed by the Secretary of State 50 years after the death of the personality named therein.

(4) Claims registered under this subdivision shall be public records.

(g) No action shall be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of 50 years from the death of the deceased personality.

(h) As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or, in products, merchandise or goods, or for purposes of advertising or selling, or solicitation of purchase of products, merchandise, goods or service. A "deceased personality" shall include, without limitation, any such natural person who has died within 50 years prior, to January 1, 1985.

(i) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape of live television transmission, of any person, such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph when one who views the photograph with

the naked eye can reasonably determine who the person depicted in the photograph is.

(j) For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

(k) The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subdivision (a).

(*l*) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation is violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

(m) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

(n) This section shall not apply to the use of a deceased personality's name, voice, signature, photograph, or likeness, in any of the following instances:

(1) A play, book, magazine, newspaper, musical composition, film, radio or television program, other than an advertisement or commercial announcement not exempt under paragraph (4).

(2) Material that is of political or newsworthy value.

(3) Single and original works of fine art.

(4) An advertisement or commercial announcement for a use permitted by paragraph (1), (2), or (3).

* * * *

EXHIBIT 15

LEO BRANTON, Jr.
A LAW CORPORATION
3460 WILSHIRE BOULEVARD, SUITE 410
LOS ANGELES. CALIFORNIA 90010
TELEPHONE (213) 384-4411

Mr. Jim Dunlop
Dunlop Manufacturing, Inc.
Box 846
Benicia, CA 94510

Dear Jim:

Enclosed herewith is a document which extends the pre-existing agreement between Dunlop and Hendrix so that it will also include the Hendrix Fuzzface.

I have just noticed that the original agreement does not provide for any term of the license. I suggest a five year term. Obviously, if things are going well for each of us, we can discuss a renewal of the term when we get close to the end of the initial five year term. If you agree with this, I would appreciate your signing the copy of this letter at the place indicated, and return it to me for my files.

Very truly yours,

/s/ Leo Branton, Jr.
LEO BRANTON, JR.

LB:kkw
Enclosure

Dunlop Manufacturing, Inc., agrees that the term of the contract between the parties will be for five years from June 1, 1986, and ending May 31, 1991.

/s/ [Illegible]
Title: President

EXHIBIT 16

MICHAEL L. KRASSNER
A Professional Corporation
Attorneys At Law
100 Harrison Street, Second Floor
San Francisco, California 94105-1605
Telephone: (415) 777-6850
Telex: 4900000674 KRA UI
Telecopier: (415) 777-6855

November 5, 1987

VIA MESSENGER

James A. Hendrix
11832 64th Avenue South
Seattle, WA 98178

Re: Winterland Productions/
Jimi Hendrix

Dear Mr. Hendrix:

Enclosed please find a form by which to register with the state of California your rights to the name, voice, signature, photograph or likeness of Jimi Hendrix. Leo Branton asked that I forward this form to you for you to fill in and sign where I have marked the "X's". When you have completed it please send it directly to Leo Branton at 3460 Wilshire Blvd., Suite 410, Los Angeles, California 90010 and he will file it with the California Secretary of State.

Please call me if you have any questions.

Very truly yours,

/s/ Karen L. Witte
KAREN L. WITTE

KLW/olj
Enc.
cc: Leo Branton, Esq.

RIGHTS TO NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS OF DECEASED PERSONALITY

REGISTRATION OF CLAIM AS SUCCESSOR-IN-INTEREST
(Section 990, Civil Code)

NAME OF DECEASED PERSONALITY

Celebrity Name(s): Jimi Hendrix

Legal Name if desired: James Marshall Hendrix

Date of death: Sept. 18th, 1970

* * * *

Name of Claimant: James A. Hendrix

Address of Claimant: 11832 64th Avenue South
Seattle, WA 93178

* * * *

Percentage interest claimed:
(x) 100% ( ) 50% ( ) 25% ( ) __%

The above percentage is claimed in (x) all types of rights OR ( ) limited rights described as follows:

_____

_____

I make this claim as successor-in-interest on the basis that I am the surviving ( ) spouse ( ) child ( ) grandchild (x) parent OR that property rights of said deceased personality have been transferred to me by ( ) contract ( ) trust ( ) will.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 11/9/87

/s/ James A. Hendrix
Signature of Claimant

James A. Hendrix
Typed name of Claimant (Title)

Fee: $10.00

Mail to: Secretary of State, P.O. Box 704, Sacramento, CA 95803 (916) 324-6778

EXHIBIT 17

RIGHTS TO NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS OF DECEASED PERSONALITY

REGISTRATION OF CLAIM AS SUCCESSOR-IN-INTEREST
(Section 990, Civil Code)

NAME OF DECEASED PERSONALITY

Celebrity Name(s): Jimi Hendrix

Legal Name if desired: James Marshall Hendrix

Date of death: Sept. 18th, 1970

* * * *

Name of Claimant: James A. Hendrix

Address of Claimant: 11832 64th Avenue South
Seattle, WA 93178

* * * *

Percentage interest claimed:
(x) 100% ( ) 50% ( ) 25% ( ) __%

The above percentage is claimed in (x) all types of rights OR ( ) limited rights described as follows:

_____

_____

I make this claim as successor-in-interest on the basis that I am the surviving ( ) spouse ( ) child ( ) grandchild (x) parent OR that property rights of said deceased personality have been transferred to me by ( ) contract ( ) trust ( ) will.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 11/9/87

/s/ James A. Hendrix
Signature of Claimant

James A. Hendrix
Typed name of Claimant (Title)

Fee: $10.00

Mail to: Secretary of State, P.O. Box 704, Sacramento, CA 95803 (916) 324-6778

EXHIBIT 18

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

WINTERLAND PRODUCTIONS
100 Harrison Street
San Francisco, CA 94105-1605

Dated:

Are You Experienced? Ltd.
c/o Alan Douglas
7080 Hollywood Boulevard
Suite 905
Hollywood, CA 90028

Re: Merchandising Agreement
(retail/licensing agency)

Gentlemen:

The following will confirm our understanding and offer to acquire certain rights in and to rights owned by ARE YOU EXPERIENCED? LTD. relative to the musical artist JIMI HENDRIX (hereinafter "Artist"). As used herein, the words "you" and "your" shall refer to ARE YOU EXPERIENCED? LTD. and "we", "us", and "our" shall refer to WINTERLAND CONCESSIONS COMPANY, a California corporation, d/b/a WINTERLAND PRODUCTIONS.

1. You hereby grant us for the term hereof the exclusive right to utilize the names, symbols, emblems, designs, likenesses, service marks, trademarks, copyrights in graphic designs, and/or visual representations of Artist (hereinafter "Licensed Property") throughout the world (hereinafter-"Licensed Area") in connection with:

(a) the manufacture, advertisement, distribution, and/or sale by us of T-shirts, baseball jerseys, sweat-

shirts, long-sleeve T-shirts, camisoles, ladies' French-cut T-shirts, muscle T-shirts, tank tops, satin garments, other upper-body garments, posters of all sizes, postcards, prints, calendars, hats, buttons, bandanas, head bands, children's wear, key fobs, bumper stickers, stick-on stickers, programs, and other mutually approved products; and

(b) the licensing of others to manufacture, advertise, distribute, and/or sell any and all merchandise of every kind and nature utilizing or relating to the Licensed Property in any manner (hereinafter "Licensed Products"). The grant made hereunder shall include the exclusive right to negotiate and recommend settlements with unlicensed manufacturers, distributors, and sellers of Licensed Products. We shall have the exclusive right to artwork utilized on Licensed Products.

2.(a) The term of this agreement (hereinafter "Licensed Term") shall commence on execution hereof and continue until the later of:

(i) five (5) years from execution hereof; or

(ii) recoupment of the advances paid hereunder.

(b) Notwithstanding the foregoing, as of January 1, 1993, Licensor shall have the option to terminate the Licensed Term by repaying to Licensee the full amount of all unrecouped advances. Such option to terminate the Licensed Term must be exercised in writing by Licensor during the period from January 1, 1993, through April 1, 1993. Upon such repayment by Licensor, this agreement shall terminate, except that the provisions of paragraphs 10(a) and 10(b) regarding sell-off rights shall continue to be operable.

3. You hereby warrant and represent as follows:

(a) You have the unrestricted right and power to grant the rights described above to us and are free to enter into this agreement.

(b) You have not assigned or in any other way sold, conveyed, transferred, or encumbered all or any portion of the rights to any other person, firm, or corporation by any instrument or agreement now valid or outstanding.

(c) The licenses set out on Exhibit "A" attached hereto represent the only other licenses currently in existence for merchandise utilizing the Licensed Property.

(d) You hereby indemnify and save us and our respective successors, assigns, and licensees harmless from and against all claims, damages, loss of profits, losses, settlements, judgments, expenses, and costs, including reasonable attorneys' fees, which may be suffered, made, incurred, or assumed by us or our successors, assigns, or licensees by reason of any breach or alleged breach by you of any agreement, warranty, or representation made or entered into hereunder by you. The above indemnification shall apply only to final judgments entered by a court having competent jurisdiction thereof or settlements entered into with your written consent, which shall not be unreasonably withheld.

4.(a) You and we agree that Jimi Hendrix was one of the most talented and admired artists of his time and still enjoys one of the greatest reputations in his field as both an artist and a composer. We recognize that you have the responsibility of coordinating all aspects of Hendrix products and that you insist that all products associated with Hendrix be in good taste

and of high quality. Therefore, you shall have the right to approve all products and your discretion in these matters, so long as you act in good faith and you do not unreasonably withhold such approvals.

(b) You and we agree we are both embarking on a program to stem the flow of unauthorized merchandise of Artist and maximize distribution of legitimate Licensed Products. To that end, you will cooperate and participate, as and when requested by us, in our efforts to: stem the flow of unlicensed merchandise; effectively utilize our existing sales network; license an appropriate group of third parties to manufacture Licensed Products. You agree to cooperate fully to effectuate the intent of this paragraph and the overall agreement so that we have an opportunity to recoup the advances we will have paid to you.

(c) You and we agree it is the express intent of this agreement that we be permitted to manufacture, advertise, distribute, and/or sell Licensed Products through various distribution methods, including normal retail channels, and to license others to manufacture, advertise, distribute, and/or sell additional Licensed Products. With respect to Licensed Products manufactured by us, the rights described in the preceding sentence shall be subject to the provisions of paragraph 7 below; with respect to Licensed Products manufactured by third-party licensees, the rights described in the preceding sentence shall be subject to the provisions of paragraph 5 below. In addition, other Licensed Products may be proposed to you by us.

5. Notwithstanding anything contained herein, you shall have the right, prior to our entry into any agreement with respect to the licensing of third parties and/or any settlement with an unlicensed manu-

facturer, to approve in writing any such agreement and/or settlement, which shall be summarized for your approval in the form attached hereto as Exhibit "B"; as you may reasonably request, we shall also furnish you with any additional information relative to such proposed agreement and/or settlement, it being understood that:

(a) It is the intent of this agreement that we have the right to negotiate licensing agreements and enter into settlements during the Licensed Term.

(b) You will act reasonably and in good faith in your evaluation of third-party licenses and/or settlements negotiated by us and submitted for your approval and shall not unreasonably disapprove any third-party license of two (2) years' duration or less.

(c) Monies and/or statements due us under such contracts shall be payable at the address set out above. *Alan Douglas* shall be the individual designated by you to approve such agreements and settlements. Once he has approved such documents, we may execute same on your behalf.

Subject to our obligation to pay royalties to you pursuant to the terms of paragraph 6 below, we shall have the right to receive monies on your behalf and deposit checks payable to you in our bank account.

6.(a) In full consideration for the rights herein conveyed, granted, and assigned to us, we hereby agree to pay you the following:

(i) of gross receipts received by us in connection with licenses granted to third parties for the manufacture, distribution, and/or sale of Licensed Products;

(ii) of gross receipts derived from settlement with unlicensed manufacturers, distributors, and sellers of products embodying the Licensed Property;

(iii) aa. in the United States and outside the United States of the average wholesale selling price on net sales of T-shirts, jerseys, sweatshirts, and hats distributed by us through normal retail channels;

bb. in the United States and outside the United States of the average wholesale selling price on net sales of satin garments distributed by us through normal retail channels;

cc. in the United States of the wholesale selling price andoutside the United States of the average wholesale selling price on net sales of buttons and paper products distributed by us through normal retail channels;

dd. in the United States and outside the United States of the wholesale selling price on net sales of of other Licensed Products distributed by us through normal retail channels.

As used in this sub-paragraph 6(a)(iii), "selling price" shall exclude sales tax, value-added tax, or the equivalent actually paid.

As used in this sub-paragraph 6(a)(iii), "net sales" shall mean gross sales less returns, credits on returns, freight and trucking charges, or allowances for freight and trucking.

With respect to Licensed Products embodying the Licensed Property hereunder together with the licensed property of any other artist(s), the royalty rate payable to you hereunder shall be computed by multiplying the royalty rate otherwise applicable to the particular Licensed Product by a fraction, the

numerator of which shall be one (1) and the denominator of which shall be the total number of royalty artists whose licensed property is embodied on such Licensed Product.

(b) As used herein, "gross receipts" shall mean one hundred percent (100%) of all monies actually received by us in connection with exploitation of the rights described herein, but excluding:

(i) all percentage participations and commissions payable by us to third parties and approved by you;

(ii) monies held as deposits which are subject to refund (until earned);

(iii) payments of governmental fee or tax of any type based on gross receipts, as transmitted to us;

(iv) all amounts expended by us, including reasonable attorneys' fees directly incurred in connection with our collection of gross receipts with respect to gross monies described in paragraph 6(a)(ii) above only.

(c) Within forty-five (45) days after each calendar quarter, we shall furnish you with a complete and accurate statement (along with a check, if appropriate) showing the accounting received by us from third-party licensees and earnings accrued by you with respect to products manufactured by us. All payments hereunder shall be in United-States dollars. Acceptance by you of such statement and payment for any period shall not, however, preclude you from thereafter questioning the accuracy thereof. During the Licensed Term and for a period of two (2) years thereafter, we will keep and maintain at our principal place of business true and accurate records

of all transactions relating to or affecting this agreement or any provision hereof, which books and records, together with supporting- vouchers, shall be open for inspection by you or your duly authorized representative once with respect to each period during regular business hours and upon seventy-two (72) hours' written notice.

(d) We shall pay you an advance of on execution hereof. If said advance has been recouped on or before expiration of four (4) years from the date of execution hereof, we shall pay you an additional advance calculated as follows:

DIVIDED BY

Number of months from the commencement date to the last day of the month in which ___ was recouped

X

Number of months remaining in Licensed Term (following the month in which ___ was recouped)

For example, if ___ was recouped during the forty-eighth month of the Licensed Term, we shall pay you an additional advance of ___ calculated as follows:

( ) DIVIDED BY = X

At the close of each accounting period set forth herein, we shall deduct from royalties otherwise payable to you pursuant to this agreement an amount equal to the advances paid by us not previously recouped or deducted from prior accountings.

(e) With respect to third-party licenses, we agree to pay you a similar sum following expiration of the term hereof upon and with respect to any and all

licenses, contracts, and agreements entered into or negotiated prior to or during the term hereof relating to any of the foregoing, and upon any and all extensions, modifications, amendments, renewals, and substitutions thereof, and upon any resumptions of such licenses and contracts.

7. Prior to the manufacture thereof, we shall furnish you with samples of each Licensed Product to be manufactured by us or by third parties for your approval (which shall not be unreasonably withheld). In the event you do not furnish us with written disapproval of same in whole or in part within seven (7) days of receipt thereof, such failure shall constitute approval by you. In addition, you shall supply us with artwork from Artist's most recent album no later than thirty (30) days after execution hereof, and shall use your best efforts to supply us with artwork from any of Artist's albums released during the Licensed Term no later than thirty (30) days after such release. You shall also provide us with a minimum of three (3) additional designs embodying the Licensed Property during the Licensed Term. As reasonably requested by us, you shall also supply additional artwork, including but not limited to a reasonable number of suitable photographs, all at your expense. Promptly after initial shipment of each Licensed Product, we will notify and furnish and/or arrange for third-party licensees to notify and furnish you with ten (10) samples of each such Licensed Product.

8. Nothing contained herein shall be construed to be prejudicial to or operate in derogation of any rights, licenses, privileges, or property which we may enjoy or to which we may be entitled as a member of the public, and this agreement shall not restrict,

diminish, or impair our rights to freely utilize in any work or production any story, idea, plot, theme, sequence, scene, episode, incident, name, characterization, or dialog derived from whatever source which may be in the public domain.

9. As used in this agreement, the term "Licensed Property" means each of the elements specified on page 1 of this agreement and all the elements collectively. We recognize the value of the good will associated with the Licensed Property and that it has a secondary meaning in the mind of the public. We acknowledge as between you and us that the Licensed Property shall be and remain your exclusive and complete property. We shall affix appropriate copyright and/or trademark notice as may be designated reasonably by you from time to time, and may take all steps necessary to secure world-wide copyright and/or trademark protection for each Licensed Product in your name, and you shall cooperate fully with us with respect to our obtaining such protection.

10.(a) Upon expiration or termination of this agreement, all rights granted to us shall revert to you, and we shall not thereafter manufacture, advertise, distribute, or sell Licensed Products in any place whatsoever. However:

(i) for a period of one hundred eighty (180) days thereafter (hereinafter "Sell-Off Period"), we may continue to sell any Licensed Products previously manufactured by us and on hand on a non-exclusive basis only by means of and through normal distribution channels and in all other respects in accordance with all the terms and conditions contained in this agreement; and

(ii) in connection with the Sell-Off Period, we may manufacture during the Sell-Off Period sufficient quantities of Licensed Products which come in different sizes to restore the ratio of our inventory to the following ratio per dozen: 1 small, 3 medium, 5 large, 3 extra-large.

(b) You shall have the right to purchase all such unsold merchandise from us at our cost in lieu of permitting us to exercise our "sell-off" rights granted under this paragraph.

11. During the term hereof, you shall not engage in any premiums, give-aways, promotional tie-ins, or other distribution or sale of Licensed Products by yourself or through third parties. This paragraph shall not preclude movie or record industry promotion in support of phonograph records or movies produced by you or on which Artist performs or promotions which do not conflict with the rights granted hereunder.

12. Any controversy or claim arising out of or relating to this agreement or the making, performance, interpretation, or breach hereof shall be settled in accordance with the rules of the American Arbitration Association in Los Angeles, California, but the choice of an arbitrator shall be subject to agreement of the parties hereto, not the rules of said Association, providded that if the parties are unable to agree on an arbitrator, the rules of said Association shall apply. Judgment upon the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. The prevailing party in any such arbitration or litigation related to such controversy or claim shall be entitled to its reasonable attorneys' fees and court costs in addition to any award received.

13. You shall duly acknowledge, execute, deliver, and/or procure the due execution and delivery to us of any and all further assignments and other instruments which we may deem appropriate, necessary, or expedient to carry out, confirm, or effectuate the purpose and intent of this agreement and the grant of rights made hereunder.

14. This agreement shall bind and inure to each of our respective heirs, legal representative, successors, and assigns, and it is understood that each of us may assign, transfer, grant, and license our rights hereunder in whole or in part to any person, firm, or corporation without limitation.

15. You agree to assist us to the extent necessary in the procurement of any protection or to protect any of our rights to the Licensed Property, and we may, if we so desire, commence or prosecute any claims or suits in our own name or in your name, or we may join you as a party thereto. Each of us shall provide the other with written notice of any infringements or imitations by others of the Licensed Property on articles similar to those covered by this agreement which may come to our attention.

16. This agreement shall be made and entered into in the State of California and shall be construed in accordance with and governed in all respects pursuant to the laws of said State.

17. This agreement constitutes the entire agreement between the parties and cannot be modified or amended except by a written instrument executed by the parties hereto, and any prior or contemporaneous agreement of the parties hereto, whether oral or written, pertaining to the subject matter hereof shall be deemed merged herewith.

18. This agreement has been the result of negotiations between the parties. Each party and its counsel have reviewed this agreement. Accordingly, the rule of construction embodied in California Civil Code §1654 (or in the laws of any other jurisdiction), to the effect that uncertainty in a contract is to be resolved against the drafting party, shall not be employed in the interpretation of this agreement.

19. All notices required to be given hereunder shall be in writing and shall be delivered personally, by facsimilie (FAX,) or by certified or registered mail, return receipt requested, postage prepaid, as follows:

(a) if to you, at the address set out above, with a courtesy copy to Michael Rosenfeld, Rosenfeld, Meyer & Sussman, 444 United Bank Building, 9601 Wilshire Boulevard, Beverly Hills, California 90210, FAX numbers (213) 271-4133 and 271-6430;

(b) if to us, at the address set out above, with a courtesy copy to Michael L. Krassner, Esq., 100 Harrison Street, Second Floor, San Francisco, California 94105-1605, FAX number (415) 777-6855.

Any notice so given shall be deemed effective upon receipt by the party to whom it is addressed. Either party may change the address to which notice is to be sent by giving written notice of such change of address to the other party as provided herein. Notwithstanding the foregoing, either party's failure to send a courtesy copy of notices pursuant to subparagraph 19(a) or 19(b) above, as the case may be, shall not be deemed a material breach of this agreement.

20. If either party believes the other to be in default, the complaining party shall provide the other with written notice thereof as provided in paragraph

20 above, and the party so notified shall have fifteen (15) days within which to cure said default before the complaining party may pursue other remedies. Notwithstanding the foregoing, there shall be no cure period if you prevent us from selling Licensed Products for any reason.

21. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement.

If the foregoing conforms to your understanding, please execute where appropriate below.

Very truly yours,

WINTERLAND PRODUCTIONS

By /s/ [Illegible]

AGREED TO AND ACCEPTED:

ARE YOU EXPERIENCED? LTD.

By /s/ [Illegible]

EXHIBIT "A"

THIRD-PARTY LICENSES FOR MERCHANDISE UTILIZING THE LICENSED PROPERTY

Licensor	Term	Area	Products

EXHIBIT "B"

MERCHANDISE LICENSING AGREEMENT

AGREEMENT made this ___ day of, _____, 19___, by and between _____ (hereinafter "Licensor") and _____ (hereinafter "Licensee").

ARTIST:

LICENSED PROPERTY: names, symbols, emblems, designs, service marks, trademarks, logos, visual representations, and likenesses of Artist

LICENSED AREA:

LICENSED TERM:

Commencement Date:

Expiration Date:

LICENSED PRODUCTS:

GRANT OF RIGHTS: Exclusive ___
Non-Exclusive ___

ROYALTIES:

Royalty Rate:

Guaranteed Minimum Payment:

Non-Returnable Advance Against Royalties:

Minimum Royalty Base: US: $ (US)

OUTSIDE US: $

If, at any time during the Licensed Term, Licensee (a) pays the third-party licensor of any licensed property similar to the Licensed Property herein a royalty rate greater than that payable to Licensor set out above; or (b) sets a minimum cost as a base for calculating royalties for the licensing to any third party of any licensed property similar to the Licensed Property herein (hereinafter "Minimum Royalty Base") which is higher than the Minimum Royalty Base for the Licensed Property herein or sets a Minimum Royalty Base with any third party for any licensed property similar to the Licensed Property herein when there is no Minimum Royalty Base herein for the Licensed Property, then the royalty rate paid such third party or the Minimum Royalty Base on which such third party is paid shall be substituted for the Royalty Rate or Minimum Royalty Base set out above as of the date of the agreement with such party to pay such higher royalty rate or set such higher Minimum Royalty Base.

Licensee shall pay Licensor the Guaranteed Minimum Payment, less such advance payment and royalty payments made by Licensee to Licensor with the last quarterly statement due hereunder. Notwithstanding the above, if the term of this agreement is for more than one (1) year, the difference between royalties earned and the Guaranteed Minimum Payment (or if royalties earned are less than the advance, then the difference between the advance and the Guaranteed Minimum Payment) shall be payable with the fourth quarterly statement due hereunder.

COPYRIGHT NOTICE: © 198_

TRADEMARK NOTICE:

INITIAL ON-SALE DATE:

LICENSOR PRICE FOR
LICENSED PRODUCT:

This agreement shall not be deemed in operation until executed by an authorized representative of both parties. Deposit of Licensee's check by Licensor in its bank account prior to execution of a final agreement shall not constitute acceptance by Licensor of the terms herein or evidence of any agreement between the parties hereto. In the event that this agreement is not executed within thirty (30) days after deposit of said check, Licensor shall return to Licensee an amount equal to the amount of said check, such return to constitute full and complete satisfaction of Licensor's obligations to Licensee with respect to the subject matter hereof.

This agreement includes the terms and conditions on the pages attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first written above.

("Licensor") ("Licensee")

By_____ By_____

Exhibit 19

Assignment of Publicity Rights

KNOW ALL MEN BY THESE PRESENTS: That in consideration of the payment of One Dollar ($1.00) and other good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned hereby sells, conveys, grants, assigns, transfers and sets over unto Authentic Hendrix, LLC, a California limited liability company (the "Company"), and its representatives, successors and assigns, any and all of the undersigned's right, title, claims and interest in and to the name, likeness, image, signature, photograph, voice, and all other representations and attributes of the late Jimi Hendrix ("Artist"), wherever situated, recognized and protected anywhere in the universe. This assignment also specifically includes all rights in promotional and publicity materials, posters, t-shirts, merchandise, artwork materials, record covers, photographs and other materials to the extent they embody the name, likeness, image, signature or other representations of Artist; all computer software, hardware and code involving or incorporating the name, likeness, image, signature, music and performances of Artist; all written or printed materials related to Artist, to the extent owned by the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Assignment of Publicity Rights as of the 11th day of August, 1995.

/s/ James A. Hendrix
JAMES A. HENDRIX

Exhibit 20

Assignment of Publicity Rights

KNOW ALL MEN BY THESE PRESENTS: That in consideration of the payment of One Dollar ($1.00) and other good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned jointly and severally hereby sell, convey, grant, assign, transfer and set over unto Authentic Hendrix, L.L.C., a California Limited Liability Company (the "Company"), and its representatives, successors and assigns., any and all of the undersigned's right, title, claims and interest in and to the name, likeness, image, signature, photograph, voice, and all other representations and attributes of the late Jimi Hendrix ("Artist"), wherever situated, recognized and protected anywhere in the universe. This assignment also specifically includes all promotional and publicity materials, posters, t-shirts, merchandise, artwork materials, record covers, photographs and other materials embodying the name, likeness, image, signature or other representations of Artist; all computer software, hardware and code involving or incorporating the name, likeness, image, signature, music and performances of Artist; all written or printed materials related to Artist, to the extent owned by the undersigned; and all sheet music or music folios of compositions of Artist.

IN WITNESS WHEREOF, the undersigned have set their hands and seals or caused these presents to be signed by its proper corporate officers and caused its proper corporate seal to be hereto affixed, as of the 11th day of August, 1995.

BELLA GODIVA MUSIC, INC.

Dated: August 9, 1995

[Illegible]

By: President

STATE OF _____)
) ss.
COUNTY OF_____)

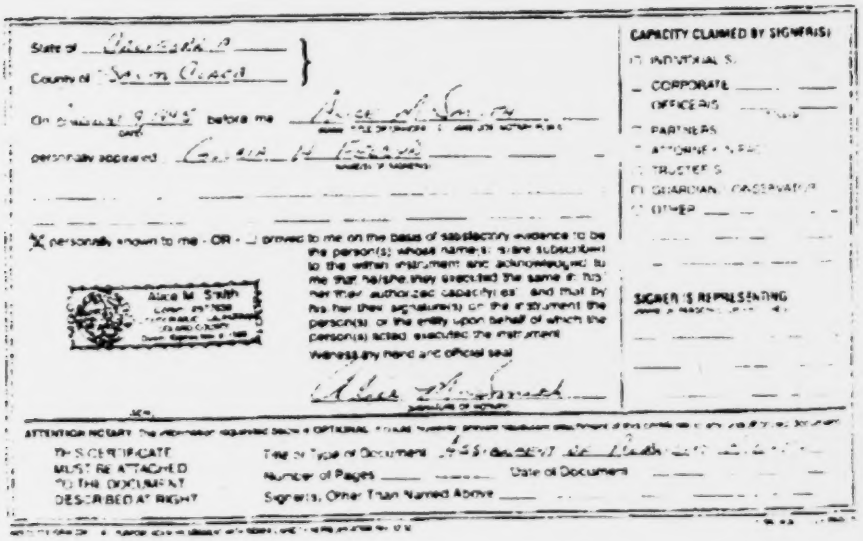
On this __ day of _____ 1995, before me personally appeared _____, to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that was authorized to execute said instrument and that the seal affixed hereto (if any) is the corporate seal. of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name:_____

NOTARY PUBLIC in and for the State of _____

Residing at: _____
My Appointment Expires: _____



BEST AVAILABLE COPY

INTERLIT B.V.I. LIMITED

Dated: 11 AUG 1995

[Illegible]
By: [Illegible]

~~STATE~~ Territory of the British Virgin Islands)
) ss.
~~COUNTY~~ Island OF Tortola)

On this 21st day of August, 1995, before me personally appeared to me known to be the A Director of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed hereto (if any) is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name: [Illegible]

NOTARY PUBLIC in and for the State of The British Virgin Islands

Residing at: [Illegible]
My Appointment ~~Expires~~: IS FOR LIFE

[SEAL]

BUREAU VOOR MUZIEKRECHTEN ELBER B.V.

Dated: 8-9-1995 [Illegible]

By: _____

STATE OF _____)

) ss.

COUNTY OF_____)

On this ___ day of _____, 1995, before me personally appeared _____ to me known to be the of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument and that the seal affixed hereto (if any) is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name:_____

NOTARY PUBLIC in and for the State of _____

Residing at: _____

My Appointment Expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On August 9, 1995 before me, Paula Palmer Notary Public
DATE NAME, TITLE OF OFFICER E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared A. B. Kenny
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☑ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PAULA PALMER
COMM. # 966997
Notary Public - California
LOS ANGELES COUNTY
My Comm. Expires FEB 19, 1997

WITNESS my hand and official seal

Paula Palmer
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☑ INDIVIDUAL
☑ CORPORATE OFFICER

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON OR ENTITY

Pacific Holding Co.
Senior Vice President

DESCRIPTION OF ATTACHED DOCUMENT

Assignment Portion
TITLE OR TYPE OF DOCUMENT

8
NUMBER OF PAGES

August 9, 1995
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

ARE YOU EXPERIENCED? LTD.

Dated: 8-9-95

[Illegible]
By: _____

STATE OF _____)
) ss.
COUNTY OF_____)

On this ___ day of _____, 1995, before me personally appeared _____ to me known to be the of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument and that the seal affixed hereto (if any) is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name:_____

NOTARY PUBLIC in and for the State of _____

Residing at: _____

My Appointment Expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On Aug 9 1995 before me, Paula Palmer - Notary Public

(DATE) (NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC")

personally appeared Alan Douglas

(NAME(S) OF SIGNER(S))

☐ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PAULA PALMER
COMM. # 994997
Notary Public — California
LOS ANGELES COUNTY
My Comm. expires SEP 2, 1997

WITNESS my hand and official seal

Paula Palmer

(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☑ CORPORATE OFFICER

(TITLE)

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
Living Expressions Kids

DESCRIPTION OF ATTACHED DOCUMENT

Assignment Partnership

(TITLE OR TYPE OF DOCUMENT)

8

(NUMBER OF PAGES)

Aug 9, 1995

(DATE OF DOCUMENT)

(SIGNER(S) OTHER THAN NAMED ABOVE)

Dated: 8-9-95

/s/ Alan D. Rubenstein
Alan D. Rubenstein
a/k/a Alan Douglas

STATE OF _____)
) ss.
COUNTY OF_____)

On this ___ day of _____, 1995, before me personally appeared _____, to me known to be individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that signed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name:_____

NOTARY PUBLIC in and for the State of _____

Residing at: _____

My Appointment Expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On August 7, 1995 before me, Paula Palmer, Notary Public

DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Alan D. Hutchinson, Wayne Alan Dougal

NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PAULA PALMER
COMM. # 1019747
NOTARY PUBLIC — CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires FEB 19, 1997

WITNESS my hand and official seal

Paula Palmer

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

August Bankruptcy
TITLE OR TYPE OF DOCUMENT

8
NUMBER OF PAGES

Aug 7 1995
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

HEBRAM HOLDINGS LIMITED

Dated: 8-9-1995

[Illegible]
By: _____

STATE OF _____)
) ss.
COUNTY OF_____)

On this ___ day of _____, 1995, before me personally appeared _____ to me known to be the of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument and that the seal affixed hereto (if any) is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Printed Name:_____

NOTARY PUBLIC in and for the State of _____

Residing at: _____

My Appointment Expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On August 9, 1991 before me, Paula Pulsar, Notary Public
(DATE) (NAME, TITLE OF OFFICER E.G. "JANE DOE, NOTARY PUBLIC")

personally appeared A. D. Kinnaman
(NAME(S) OF SIGNER(S))

☐ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PAULA PULSAR
COMM. # 999997
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires FEB 19 1992

WITNESS my hand and official seal.

Paula Pulsar
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☒ CORPORATE OFFICER

(TITLE)

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
Wilshire Holdings, Inc.

DESCRIPTION OF ATTACHED DOCUMENT

Assignment Contract
(TITLE OR TYPE OF DOCUMENT)

- 8 -
(NUMBER OF PAGES)

August 9, 1991
(DATE OF DOCUMENT)

(SIGNER(S) OTHER THAN NAMED ABOVE)

EXHIBIT 21

[Logo]

State of California
Bill Jones
Secretary of State

REGISTRATION OF CLAIM
AS SUCCESSOR-IN-INTEREST
(Civil Code Section 990)

Instructions:

1. Complete and mail to: Secretary of State
P.O. Box 944225
Sacramento, CA 94244-2250
(916) 324-6778

2. Include filing fee of $10.00.

Celebrity Name: Jimi Hendrix

Legal Name (optional): James Marshall Hendrix

Date of Death: Septermber 18, 1970

Name of Claimant: Authentic Hendrix, L.L.C.

Address of Claimant: 83 South King Street, Seattle, WA 98104

Percentage Interest Claimed: (x) 100% ( ) 50%
( ) 25% ( ) __%

The above percentage is claimed (x) all types of rights OR ( ) limited rights described as follows: All rights, including but not limited to, reproduction and commercial exploitation rights, pertaining to the name, voice, signature and likeness, whether photographic or artistic, of Jimi Hendrix

I make this claim as Successor-In-Interest on the basis that I am the surviving ( ) spouse ( ) child ( ) ( ) grandchild ( ) parent OR that property rights of

said deceased personality have been transferred to me by (x) contract ( ) trust ( ) will.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 12, 1996

AUTHENTIC HENDRIX, L.L.C.

By: /s/ Janie Hendrix-Wright
Signature of Claimant

Janie Hendrix-Wright, President
Typed Name of Claimant (Title)

EXHIBIT 22

FEE: $10.00
File in duplicate

REGISTRATION OF CLAIM OF RIGHTS
AS SUCCESSOR-IN-INTEREST

Pursuant to Title 12 Oklahoma Statutes §1448.

DECEASED PERSONALITY

Name: Jimi Hendrix

Legal Name or other name(s) if desired:
James Marsha Hendrix

Date of death: September 18, 1970

CLAIMANT OF DECEASED PERSONALITY

Name of Claimant: Authentic Hendrix, L.L.C.

Address of Claimant: 83 South King Street
Seattle, WA 98104

I make this claim as successor-in-interest on the basis that I am the surviving: ( ) spouse ( ) issue ( ) parent ( ) other in accordance with Section 213 of Title 84 of the Oklahoma Statutes OR that property rights of said deceased personality have been transferred to me by: (x) contract ( ) trust ( ) testamentary document.

Percentage interest claimed: (x) 100% ( ) 50% ( ) 25% ( ) other ____%

The above percentage is claimed in ( ) all rights OR ( ) limited rights as described as follows: All rights including, but not limited to, reproduction and commercial exploitation rights, pertaining to the name, voice signature and niceness, whether photographic or artistic, of Jimi Hendrix.

I declare under penalty of perjury, under the laws of the State of Oklahoma that the foregoing is true and correct.

Dated; April 12, 1.996 /s/: Janie Hendrix-Wright
Signature of Claimant

County of King AUTHENTIC HENDRIX, L.L.C.

State of Washington

By: _____
Name of Claimant (TYPED)
Janie Hendrix-Wright,
President

This instrument was acknowledged before me on this 12th day of April, 1996 by _____.

My Commission Expires: 8-3-98

/s/ [Illegible]
(Signature of notarial officer)

EXHIBIT 23

SECRETARY OF STATE
APPLICATION FOR REGISTRATION
OF CLAIM TO RIGHT OF PUBLICITY

Authentic Hendrix, L.L.C. OF 83 South King. Street
Name claimant Address
Seattle, WA 98104

BEING FIRST DULY SWORN, UNDER PENALTY OF PERJURY, DEPOSES AND SAYS THAT HE IS THE: (check one)

[X] SUCCESSOR IN INTEREST

[ ] LICENSEE

OF James. Marshall Hendrix
Legal Name of Deceased Person

Jimi Hendrix
Professional Name: of Deceased Person

WHO DIED ON Sept. 18, 1970
Date of Death of Deceased Person

THAT THE BASIS OF THE CLAIMANT'S CLAIM IS AS FOLLOWS: Authentic Hendrix, L.L.C is the owner of all rights in and to Jimi Hendrix's rights of publicity by virtue of an assignment of those, rights from James A. Hendrix the decedent's next of kin.

THAT THE FOLLOWING IS A DESCRIPTION OF THE RIGHTS CLAIMED: All rights including, but not limited to, reproduction and commercial exploitation rights, pertaining to the name, voice signature and likeness, whether photographic or artistic of Jimi Hendrix.

DATED THIS 12th DAY OF April, 1996

AUTHENTIC HENDRIX, L.L.C.

BY CLAIMANT: /s/ Janie Hendrix-Wright
Signature
By: /s/ Janie Hendrix-Wright, President

SUBSCRIBED AND SWORN TO ME THIS 12th DAY OF April, 1996.

(Notary Seal) /s/ [Illegible]
Notary Public

MY COMMISSION EXPIRES 8-3-98

EXHIBIT 24

USE OF DECEASED INDIVIDUAL'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS

REGISTRATION OF CLAIM
(Section 26.006, Property Code)

1. THE LEGAL NAME OF DECEASED INDIVIDUAL: James Marshall Hendrix
2. OTHER NAMES BY WHICH DECEASED INDIVIDUAL. WAS KNOWN: Jimi Hendrix
3. DATE OF DEATH OF DECEASED INDIVIDUAL: 9/18/70
4. NAME OF CLAIMANT: AUTHENTIC HENDRIX, L.L.C., by Janie Hendrix-Wright, President
5. ADDRESS OF CLAIMANT: 83 South King Street, Suite 606, Seattle, WA 98109
6. BASIS OF CLAIM (Check appropriate statement)

I MAKE THIS CLAIM AS SUCCESSOR-IN-INTEREST ON THE BASIS THAT:

____ (1) I am the Independent Executor or _____ of the Estate of _____, OR

____ (2) I am the surviving
( ) spouse ( ) child
( ) grandchild ( ) parent, OR

_X_ (3) The property rights of said deceased individual have been transferred to me by
(x) contract ( ) trust
( ) will.

7. STATEMENT OF THE RIGHT CLAIMED:

A. PERCENTAGE OF INTEREST CLAIMED:

(x) 100% ( ) 50%

( ) 25% ( ) ____

B. THE ABOVE PERCENTAGE IS CLAIMED

(x) All types of rights

OR

( ) Limited rights described as follows:

All rights, including, but not limited to, reproduction and commercial exploitation rights, pertaining to the name, voice, signature and likeness, whether photographic or artistic, of Jimi Hendrix.

AUTHENTIC HENDRIX, L.L.C.

By /s/ Janie Hendrix-Wright, President
Signature of Claimant
Janie Hendrix-Wright, President

STATE OF NEW YORK

COUNTY OF NEW YORK

Before me, a notary public, on this day personally appeared Janie Hendrix-Wright known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 15th, day of May, 1996.

/s/ Victor Revera, Jr.
Notary Public Signature

Victor Rivera
Notary Public Printed or
Typed Name

My Commission Expires 6/15/97

INSTRUCTIONS

1. The filing fee is $25.00. The check should be made payable to the Secretary of State.

2. The completed form and filing fee should be sent to the Office of the Secretary of State, Statutory Documents Section, P.O. Box 12887, Austin, TX 78711-2887.

3. The claim is filed pursuant to Section 26.006 of the Texas Property Code. The date of filing is the date of receipt by the Secretary of State of a properly executed form and the required 325.00 filing fee.

4. The claim will not be filed if any of the statements on the claim are not completed, the statement is not properly signed and verified. or the filing fee has not been submitted. A rejection letter will be sent stating the reason or reasons the claim was not filed.

5. Any questions should be directed to (512) 463-5654.

EXHIBIT 25

MERCHANDISING AGREEMENT

This Merchandising Agreement is made this 31st day of October, 1996 between AUTHENTIC HENDRIX, L.L.C., a California limited liability company ("Licensor") and WINTERLAND CONCESSIONS COMPANY, a California corporation d/b/a WINTERLAND PRODUCTIONS ("Licensee").

WHEREAS, Licensor is the owner of the rights in the name, image and likeness of Jimi Hendrix (hereinafter "Artist"), and Licensee is in the business of manufacturing and merchandising various products bearing the name, image and likeness of musicians and other celebrities, and the parties hereto desire that Licensee manufacture and sell certain products bearing the name, image and likeness of Artist;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, IT IS AGREED:

1. Grant of License. Licensor hereby grants Licensee for the Term hereof the right to utilize the names, symbols, emblems, designs, likenesses, service marks, trademarks, copyrights in graphic designs, and/or visual representations of Artist (hereinafter "Licensed Rights") throughout the world (hereinafter the "Territory"), in connection with:

(A) the manufacture, advertisement, distribution, and/or sale by Licensee of the following merchandise: buttons, stickers, hats, jerseys, rock 'n roll jewelry, mugs, neckwear, paper products (including but not limited to calendars, postcards and posters (but excluding limited edition posters)), sweatshirts and T-shirts (other than tie-dyed T-shirts). Notwith-

standing anything contained herein, Licensor shall not authorize more than four (4) styles of tie-dyed T-shirts during any year of the Term (T-shirts of the same design in a different color shall be deemed one (1) T-shirt) (the "Licensed Products");

(B) the licensing of others to manufacture, advertise, distribute, and/or sell any and all of the Licensed Products utilizing or relating to the Licensed Rights; provided, that any such licensee shall be subject to the prior written approval of Licensor, in Licensor's complete discretion, and any such license (other than an overall distribution agreement) with such approved licensee shall be subject to the prior written approval of Licensor if such license shall deviate in any material respect from the form of license annexed hereto as Exhibit "A". Upon submission of a proposed licensee, Licensee shall advise Licensor in writing if the agreement with such licensee shall be subject to an overall distribution agreement; and

(C) notwithstanding the provisions of subparagraph (B), Licensor shall not reject a licensee pro posed by Licensee for a Licensed Product which is not an Exclusive Product solely for the purpose of preventing Licensee from competing with Licensor or Licensor's future licensees in the sale of such Licensed Product; provided, however, Licensor may reject such licensee if Licensor has previously entered into an agreement for a Licensed Product which is not an Exclusive Product if in Licensor's reasonable opinion Licensee's proposed license shall interfere with Licensor's license.

2. Licensee's Responsibilities. Licensee shall create and administer a high-quality licensing and merchandising program throughout the Territory utilizing the Licensed Rights to create and distribute Licensed

Products. Licensee shall use its commercially reasonable good faith efforts to promote and provide uniform images, artwork and logos so that the Licensed Products will be of consistent quality, style and appearance in the marketplace, it being understood that screen printing quality may vary. Licensee shall create and distribute professional, high-quality sales materials highlighting approved images, artwork and logos for marketing the Licensed Products, attempt to secure the use of Licensed Products for use by third parties in their advertising programs, and to include the Licensed Products in Licensee's sales materials distributed at trade shows.

3. Exclusivity.

(A) The rights granted to Licensee hereunder shall be exclusive only with respect to the following products: buttons, stickers, hats, jerseys, paper products (including but not limited to calendars, postcards and posters but excluding limited edition posters), sweatshirts and T-shirts (other than tie-dyed T-shirts) (hereinafter the "Exclusive Products"). Other than as provided in the preceding sentence, the rights granted to Licensee shall be nonexclusive and Licensor shall retain the right to manufacture, distribute and license any products, other than Exclusive Products, utilizing or relating to the Licensed Rights. Notwithstanding the foregoing, Licensor shall not have the right, during the Term, to utilize artwork created by Licensee for use on Exclusive Products.

(B) Licensor has advised Licensee that Licensor and/or James A. Hendrix as the sole heir of Jimi Hendrix has heretofore entered into non-exclusive agreements with

(i) POMEGRANATE ARTBOOKS, INC. for the production and sale of 1997 calendars embodying the

name and approved likeness of Jimi Hendrix for the territory of world for a period of one (1) year commencing October 30, 1995.

(ii) BALZOUT, INC. for the production and sale of T-shirts, hats, caps, fleece, denim jackets, and stickers embodying the name and approved likeness of Jimi Hendrix for the territory of the United States, Canada, Japan and the Caribbean for a period of three (3) years commencing August 2, 1995.

(iii) BLUE HAIR for the production and sale of T-shirt and stickers embodying the name and approved likeness of Jimi Hendrix for the territory of the United States and Japan for a period of two years commencing September 18, 1995.

(iv) LIQUID BLUE, INC. for the production and sale of T-shirts, hats, caps, fleece, denim jackets, and stickers embodying the name and approved likeness of Jimi Hendrix for the territory of the United States, Canada, Japan and the Caribbean for a period of two years commencing November, 1995.

(v) NOT FADE AWAY GRAPHICS, INC. for the production and sale of T-shirts embodying the name and approved likeness of Jimi Hendrix for the territory of the world for a period of three (3) years commencing June, 1995.

(vi) MARY JANE'S IMPORTS for the production and sale of hats embodying the name and approved likeness of Jimi Hendrix for the territory of the United States and Canada for a period of two years commencing June 29, 1995.

(vii) HEAVEN SMILES ART PRODUCTIONS, INC. for the production and sale of T-shirts embodying the name and approved likeness of Jimi Hendrix

for the territory of the world a period of two (2) years commencing February 6, 1995.

(viii) DNH GRAPHIX, INC. for the production and sale of T-shirts embodying the name and approved likeness of Jimi Hendrix for the territory of the United States and Canada for a period of two years commencing August 2, 1995.

(ix) ELOPE for the production and sale of hats embodying the name and approved likeness of Jimi Hendrix for the territory of the United States and Canada for a period of two (2) years commencing July 20, 1995.

(x) ISLAND SCREENWORKS PRINTING, INC. for the production and sale of T-shirts, jackets, shorts, hats, embroidered products, stickers and posters embodying the name and approved likeness of Jimi Hendrix for the territory of the world for a period of two years commencing December 30, 1995.

(xi) THE MOUNTAIN CORPORATION for the production of T-shirts, stickers and belt buckles embodying the name and approved likeness of Jimi Hendrix for the territory of the United States and Canada for a period of two years commencing on November 2, 1995.

Upon the expiration or other termination of the agreements referred to in this subparagraph 3(B) (the "Existing Agreements"), the same shall not be renewed and during the Term, as hereinafter defined, no party shall have the right to license the Licensed Rights except as provided for in this agreement. Licensee agrees that the Existing Agreements to the extent of the terms set forth above shall not be deemed a breach of this agreement Licensor expressly warrants and represents that no other licenses exist or

will exist during the Term throughout the Territory except for the Existing Agreements as set forth above with respect to the Licensed Rights to the products identified in paragraph 3(A) above.

Upon execution hereof, Licensee shall have the right to directly collect all sums due to Licensor in connection with the Existing Agreements. Licensor shall retain an amount equal to _____ percent of such monies and shall pay the remaining percent of such monies to Licensor in accordance with the provisions of paragraph 10 and 11. Upon execution hereof, Licensor shall deliver a letter of direction in the form of Exhibit "B" annexed hereto to each Existing Agreement licensee.

4. Term of Agreement. The term of this Agreement (hereinafter the "Term") shall be three (3) years, commencing on the date set forth above. If upon the expiration of the Term the Advance remains unrecouped then the Term shall be automatically extended until the end of the calendar quarter during which the Advance is recouped. Licensor shall have the right at any time following the expiration of the Term to terminate the extension of the Term by repaying to Licensee the unrecouped balance of the Advance and by purchasing any of Licensee's then remaining inventory at Licensee's manufacturing cost. Following the termination of the Term, as the same may be extended as provided for in this Paragraph 4, Licensee shall cease all activities permitted by this Agreement including all manufacture, advertisement, distribution, sale and/or licensing of the Licensed Products, *provided*, that if Licensor elects not to purchase any remaining inventory of Licensed Products at Licensee's manufacturing cost therefor then Licensee shall have the right to sell its existing stock

of Licensed Products on hand for a period of one hundred and twenty (120) days following the end of the Term. Without prior written approval of Licensor, Licensee shall not manufacture or authorize any sub-licensee to manufacture any new Licensed Products at any time within two (2) months before the end of the Term, including any extension thereof.

5. Optional Early Termination. Notwithstanding the preceding paragraph, Licensor shall have the right to terminate the Term of this Agreement (A) at any time in the event of Licensee's material breach of this Agreement which, is not fully cured within twenty (20) days after notice thereof from Licensor to Licensee and (B) in the event that Licensee files a petition in bankruptcy, or in the event that a petition in bankruptcy is filed against Licensee and is not dismissed within sixty (60) days.

6. Approval of Products, Advertising & Packaging.

(A) Licensor shall have the right of final approval over the following elements of all Licensed Products: selection of the image to be utilized, manipulation and adaptation of the images used for reproduction, and the quality and style.

(B) Prior to the manufacture of each Licensed Product, Licensee shall submit to Licensor a prototype for such Licensed Product for Licensor's prior written approval. In the event Licensor does not respond in writing within seven (7) days after receipt of such prototype for approval, the prototype shall be deemed disapproved. However, in the event Licensor does not respond in writing within seven (7) days after receipt of such prototype for approval, Licensee may thereafter provide Licensor with written notice of such failure to respond. Should Licensee provide

such written notice of failure to respond and should Licensor thereafter fail to respond within five (5) days from receipt of such notice, Licensor's silence shall then be deemed to constitute approval of such prototype.

(C) Prior to the publication, public distribution or use of any advertisement or other promotional material which incorporates the Licensed Rights which is intended to be used in conjunction with the sale or distribution of any Licensed Product (hereinafter an "Advertisement"), other than standard trade advertisements and sales materials which only depict the Licensed Product the price thereof and other identifying material, Licensee shall submit the Advertisement to Licensor for Licensor's prior written approval. In the event Licensor does not respond in writing within seven (7) days after receipt of such Advertisement for approval, the Advertisement shall be deemed disapproved. However, in the event Licensor does not respond in writing within seven (7) days after receipt of such Advertisement for approval, Licensee may thereafter provide Licensor with written notice of such failure to respond. Should Licensee provide such written notice of failure to respond and should Licensor thereafter fail to respond within five (5) days from receipt of such notice, Licensor's silence shall then be deemed to constitute approval of such Advertisement. Once an Advertisement has been approved, Licensee need not submit variations of that Advertisement for re-approval, when such variations are merely of size, color, date and the like.

(D) Prior to the manufacture or distribution of each Licensed Product, Licensee shall submit to Licensor a prototype of all packaging, labels and/or wrapping for such Licensed Product which contains

thereon the Licensed Rights (hereinafter "Packaging"), for Licensor's prior written approval. In the event Licensor does not respond in writing within seven (7) days after receipt of such Packaging for approval, the Packaging shall be deemed disapproved. However, in the event Licensor does not respond in writing within seven (7) days after receipt of such Packaging for approval, Licensee may thereafter provide Licensor with written notice of such failure to respond. Should Licensee provide such written notice of failure to respond and should Licensor thereafter fail to respond within five (5) days from receipt of such notice, Licensor's silence shall then be deemed to constitute approval of such Packaging.

(E) Licensee shall be solely responsible for obtaining written authorization from the photographers whose photographs are used on the Packaging and Advertisements for the Licensed Products, and for all costs relating thereto except for those photographs and designs which are owned by Licensor including without limitation those photographs and/or designs shown on Exhibit "C" annexed hereto.

7. Consistent Quality. Licensee warrants, represents and agrees that it shall at all times maintain the quality of the Licensed Products to the same standard of quality and appearance as approved by the Licensor and cause said quality and appearance to be maintained by its manufacturers, so that at no time shall the quality or appearance of the Licensed Products be any less than the quality or appearance that was approved by Licensor it being understood that screen printing quality may vary. Any material failure to maintain such quality or appearance in any Licensed Product shall constitute a breach by Licensee provided the Licensee has failed to cure such failure

prospectively within thirty (30) days from Licensee's receipt of notice of such failure, and Licensor shall have the right in its sole discretion to withdraw its approval of such Licensed Product, at which time Licensee shall promptly withdraw such Licensed Product from all distribution and sale. Licensor shall at any time from time to time upon reasonable notification have the right to enter Licensee's premises and the premises of Licensee's manufacturers in order to inspect any and all Licensed Products so as to confirm that the quality thereof is being maintained.

8. Ownership of Materials.

(A) Licensed Rights. Subject to the license granted herein, the Licensed Rights shall be and remain the exclusive property of Licensor. Licensee shall affix on Licensed Products and related advertising appropriate copyright and/or trademark notices as Licensor shall designate from time to time, and shall assist and fully cooperate with Licensor in Licensor's securing of worldwide copyright and/or trademark protection for each Licensed Product in the name of Licensor.

(B) Production Materials. All artwork, designs, images, logos, impressions, plates, dies, films, color separations, films, negatives, transparencies, prototypes and other materials created by Licensee or its agents or assigns to manufacture, market and advertise the Licensed Products including any such materials furnished to Licensee prior to the dates hereof by Alan Douglas or any person, firm or corporation associated or affiliated with Alan Douglas shall become the property of Licensor at the end of the Term, and Licensee shall promptly deliver all such materials to Licensor at the end of the Term. The foregoing shall not include the obligation to deliver materials used

for manufacturing the Licensed Products which Licensee warrants and represents shall be destroyed or not used after the expiration of the Term.

9. Royalties. Licensee shall pay to Licensor royalties as follows:

(A) ____ percent of gross receipts received by Licensee in connection with licenses granted to third parties for the manufacture, distribution and/or sale of Licensed Products;

(B) ____ percent of gross receipts received by Licensee derived from settlement with or judgment against unlicensed manufacturers, distributors and sellers of products embodying the Licensed Property;

(C) ____ percent in the United States and (9%) percent outside the United States of the wholesale selling price on net sales of T-shirts, jerseys and sweatshirts distributed through normal retail channels;

(D) ____ percent in the United States of the wholesale selling price and percent outside the United States of the average wholesale selling price on the net sales of buttons, paper products [excluding school products, party goods, calendars (Europe), and art prints (Europe)] and hats distributed through normal retail channels;

(E) ____percent of thee wholesale selling price on net sales of paper school products and mugs distributed through normal retail channels;

(F) ____ percent of the wholesale selling price on net sales of paper party goods, calendars (Europe), art prints (Europe), distributed through normal retail channels;

(G) ____ in the United States and ____ percent outside the United States of the wholesale selling price on net sales of other Licensed Products distributed though normal retail channels.

(H) As used in this paragraph 9, "selling price" shall exclude sales tax, value-added tax, or the equivalent actually paid.

(I) As used in this paragraph 9, "net sales" shall mean gross sales less returns, credits on returns, freight and trucking charges and allowances for freight and trucking.

(J) Licensee warrants that the royalty rates set out in sub-paragraphs (A) through (G) above are no less than ____ of the most favorable rates currently being granted by it and agrees that if, at any time during the Term, it enters into an agreement with any licensor of a property similar to the Licensed Property herein with respect to products similar to the Licensed Products herein (and said products are manufactured, distributed and/or sold thorough similar means of distribution during the Term) at royalty rates in excess of ____ percent of the rates set forth in such subparagraph K ((A) through (G)) below ____ percent of such royalty rate once the royalties payable to Licensor hereunder reach One Million ($1,000,000) Dollars) such more favorable royalty rate as is applicable will automatically apply hereunder from the date of such higher payment to such licensor.

(K) At such time as the royalties payable to Licensor hereunder reach one million ($1,000,000) dollars the then applicable royalty rates provided in sub-paragraphs (A) through (G) above shall be increased to the following rates:

(A) -

(B) -

(C) -

(D) -

(E) -

(F) -

(G) -

10. Accounting.

(A) Royalties will be accounted for and paid on a quarter annual basis within forty five (45) days from the end of each calendar quarter. No production, manufacturing, advertising or distribution costs related to the sale of the Licensed Products will be deducted from the royalties payable to Licensor hereunder. All payments of royalties shall be in U.S. dollars.

(B) Within forty five (45) days from the end of each calendar quarter Licensee will furnish to Licensor complete and accurate financial statements of all gross receipts described in paragraph 9 with respect to the calendar quarter for which the payment is made, together with copies of appropriate extracts from any third-party sub-licensee or distributor during said calendar quarter.

(C) Licensee shall keep appropriate and adequate books of account and records in respect of its manufacture and sale of the Licensed Products. Throughout the Term' and for a period of two (2) years following its termination, Licensee shall maintain detailed records of all receipts and disbursements related to its performance under this Agreement. Licensor, or its duly authorized representatives, once a year and upon fifteen (15) days written notice, shall have the

right, during normal business hours, to examine said books of account and records, and all other documents with respect to the manufacture and sale of the Licensed Products and to make copies thereof. In the event that any examination conducted by Licensor or its representatives reveals a discrepancy of ____ percent or greater in the amounts due and owing to Licensor for the accounting period in question and Licensee agrees with such figure, or the parties agree on some other figure in excess of such amount or it is adjudicated that there is a deficiency in excess of such amount, then Licensee, in addition to making immediate payment of any such discrepancy, shall reimburse Licensor for all reasonable accountant's fees and costs incurred in making such examination.

(D) Licensor shall have access on reasonable notice to Licensee, during business hours, to the facilities where the Licensed Products are stored in order to verify inventory.

11. Guaranteed Advance. Licensee guarantees that the aggregate royalties to be received by Licensor during the Term shall be no less than ____ Dollars, and Licensee will pay such guaranteed royalties to Licensee in advance (hereinafter the "Advances") as follows:

(A) ____ Dollars upon execution of this agreement;

(B) ____ Dollars one year after the date set forth above; and

(C) ____ Dollars two years after the date set forth above.

At the close of each accounting period, Licensee shall deduct from royalties otherwise payable to

Licensor an amount equal to the Advances previously paid by Licensee which have not been previously recouped or deducted from royalties due in prior accountings. In the event that the royalties payable for the first year of the Term exceed the amount set forth in subparagraph (A) above; such excess shall be offset first against the Advance due under subparagraph (C) above.

12. Recoupment Bonus. In the event Licensor earns Dollars in royalties hereunder in less than twenty-four (24) months from the date set forth above, Licensee shall pay Licensor on such date a non-recoupable bonus of ____ Dollars.

13. Warranties and Indemnities.

(A) Licensor represents and warrants that Licensor has the unrestricted right and power to grant the Licensed Rights to Licensee, that Licensor is the sole and exclusive owner of all rights granted herein that the use of the Licensed Rights hereunder in accordance with this Agreement will not infringe upon or violate any rights of any third party of any nature whatsoever, and Licensor has not sold, conveyed, transferred or otherwise assigned the Licensed Rights to any third party by any instrument or agreement now valid or in force. Licensor shall indemnify and hold harmless Licensee and its respective successors, assigns and licensees from and against all claims, damages, losses, judgments and costs, including reasonable attorneys' fees, which may be suffered, made or incurred by reason of any breach or alleged breach by Licensor of the representations and warranties herein set forth.

(B) Licensee shall indemnify and hold harmless Licensor and its respective successors, assigns and

licensees from and against all claims, damages, losses, judgments and costs, including reasonable attorneys' fees, which may be suffered, made or incurred by reason of (i) any breach by Licensee of the terms and conditions of this Agreement, (ii) any allegedly unauthorized use of any patent, process, idea, method or device by Licensee and not provided by Licensor in connection with the Licensed Products, and (iii) the manufacture or sale of the Licensed Products (other than claims arising by reason of any breach by Licensor of the representations and warranties herein set forth or artwork or other materials supplied by Licensor or on its behalf).

(C) The indemnifications set forth in this paragraph 13 shall apply only to final judgments entered by a court having competent jurisdiction thereof, or settlements entered into with the written consent of the indemnifying party. In the event Licensee receives notice of any claim, demand or action subject to indemnity by Licensor, Licensee shall within twenty (20) business days thereof notify Licensor thereof, with a copy of any portion of such claim, demand or action which is in writing, and Licensor shall have the right, but not the obligation, to assume control of the defense of such claim, demand or action at Licensor's expense. In the event Licensor receives notice of any claim, demand or action subject to indemnity by Licensee, Licensor shall within twenty (20) business days thereof notify Licensee thereof, with a copy of any portion of such claim, demand or action which is in writing, and Licensee shall have the right, but not the obligation, to assume control of the defense of such claim, demand or action at Licensee's expense. In the case of indemnity by either Licensor or Licensee, failure of the indemnified party to notify the indemnifying party as provided herein shall relieve the indemnifying party

of its indemnity obligation hereunder with respect to any claim, demand or action requiring such notice.

14. Breach. Neither party shall be deemed in default or breach of this agreement unless such party is given notice thereof and same is not cured within fifteen (15) days of such notice. A waiver or breach by either party in any one instance shall not constitute a waiver of any subsequent breach, whether or not similar.

15. Policing of Infringement.

(A) Licensor and Licensee agree that they are both embarking on a program to stem the flow of unauthorized merchandise of Artist and to maximize distribution of legitimate Licensed Products. To that end, Licensor and Licensee will cooperate and participate with each other, as and when requested by the other, in efforts to: stem the flow of unlicensed merchandise; effectively utilize Licensee's existing sales network; license an appropriate group of third parties to manufacture Licensed Products. The parties agree to cooperate fully to effectuate the intent of this paragraph and the overall agreement.

(B) The parties agree to assist each other in the procurement of any protection or to protect any of the rights to the Licensed Property. Licensee may, if it so desires, commence or prosecute any claims or suits in its own name or in Licensor's name, or Licensee may join Licensor as a party thereto. Each party shall provide the other with written notice of any infringements or imitations by others of the Licensed Property on articles similar to those covered by this Agreement which may come to its attention. Upon receipt of notice of a violation of the rights granted to Licensee, Licensor shall immediately notify Licensee thereof,

and Licensee shall have the right to prosecute such violation. licensee shall not be responsible for any attorneys' fees incurred by Licensor prior to the notification of such violation and shall only be responsible for reasonable attorney's fees if it is delinquent in its prosecution of the violation. Licensee shall not indemnify Licensor with respect to any settlement entered by Licensor without Licensee's written consent.

16. Licensors Purchases. Licensor shall have the right to purchase from Licensee, at Licensee's most favorable wholesale price for similar quantities sold, such Licensed Products in such quantities as Licensor may request. Notwithstanding paragraph 3 hereof, Licensor and/or its authorized representatives shall have the right to sell such Licensed Products at events or venues sponsored, owned or operated by Licensor, including without limitation concerts, festivals, exhibits, museums, restaurants, catalogues distributed by Licensor, an internet page for Artist or Hendrix theme stores .owned or controlled by Licensor.

17. Samples. Licensee shall deliver to Licensor five (5) samples of the final manufactured version of each Licensed Product free of charge, promptly upon completion of the fast commercial manufacture of such Licensed Product.

18. Confidentiality. This Agreement and its terms are confidential and shall not be disclosed by either party hereto (without prior written consent of the other party) to any third party other than (a) each party's own legal, financial, tax, accounting and business advisors, (b) each party's banks or secured lenders, (c) as reasonably required to carry out and effectuate the terms of this Agreement, or (d) as required by any government entity or agency or court order.

19. Construction. This agreement contains the sole and entire agreement between the parties hereto with respect to the transaction contemplated herein. All rights not granted herein are expressly reserved by Licensor. If any term or condition of this agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, said term or condition that is determined to be invalid, illegal or unenforceable shall be deemed severed from this agreement, and the remaining terms and conditions shall constitute the agreement between the parties. Nothing herein shall be construed as creating a partnership or joint venture between the parties hereto.

20. Modifications & Waivers. No modification, amendment, waiver, termination or discharge of this agreement or for any provision hereof shall be effective unless confirmed in writing signed by the party sought to be bound. No waiver of any provision of this agreement or of any default hereunder shall affect the waiving party's rights thereafter to enforce such provision or to exercise any right or remedy in the event of any other default, whether or not similar.

21. Applicable Law. This agreement shall be construed in accordance with the laws of the State of California, and shall be governed thereby.

22. Notices. All notices given to Licensor hereunder and all statements and payments to be delivered to Licensor hereunder shall be addressed to Licensor, as follows:

Authentic Hendrix, L.L.C.
83 South King Street, Suite 606
Seattle, Washington 98104
Attn: Janie Hendrix-Wright, President
Fax #206 223 0114

with a copy to:

H Reed Wasson, General Counsel
Authentic Hendrix, L.L.C.
83 South King Street, Suite 606
Seattle, Washington 98104
Fax #206 223 0114

or to such other address as Licensor shall designate to Licensee in writing from time to time.

All notices to Licensee hereunder shall be addressed as follows:

Winterland Productions
100 Harrison Street
San Francisco, California 94108-1605
Attn: Business and Legal Affairs
Fax #415 597 9855

or such other address as Licensee shall designate to Licensor in writing from time to time. All notices shall be in writing and shall either be served by registered or certified mail or by telefax, all charges prepaid.

23. Distribution of Licensor's Products

(A) Upon Licensor's request, Licensee shall distribute for Licensor throughout the Territory any products (other than Exclusive Products) which Licensor has manufactured or caused to be manufactured utilizing or relating to the Licensed Rights.

(B) Licensee shall not be obligated to distribute products pursuant to this Paragraph 23 if

(a) Such product is offensive.

(b) Such product is illegal.

(c) Such product competes with products manufactured and sold by

Licensee which utilize the Licensed Rights or,

(d) Licensee is not capable of distributing such product.

(C) For any products distributed by Licensee pursuant to this Paragraph 23, Licensee shall ____ percent of the gross receipts received by Licensee from sales of such products and shall remit the remaining percent of such gross receipts received by Licensee to Licensor in accordance with the provisions of Paragraph 10 hereof but without regard to the payment or recoupment of the Advance referred to in Paragraph 11 hereof.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized officers of each party on the date first set forth above.

AUTHENTIC HENDRIX, L.L.C.

By: /s/ Janie Hendrix

WINTERLAND CONCESSIONS COMPANY, d/b/a/ WINTERLAND PRODUCTIONS

By: /s/ illegible

Experience Hendrix, L.L.C. by its signature below guarantees the obligations of Authentic Hendrix, L.L.C. of all of the terms and conditions of the agreement dated this 31st day of October, 1996 by and between Authentic; Hendrix, L.L.C. and Winterland Concessions Company, d/b/a Winterland Productions to which this guarantee is annexed includ ing without limitation, the obligations of Authentic Hendrix, L.L.C. set out in paragraphs 4 and 5 thereof.

EXPERIENCE HENDRIX, L.L.C.
By: /s/ Jamie Hendrix

Exhibit "A"

RETAIL LICENSING AGREEMENT

AGREEMENT made this _____ day of _____, 19__, by and between. WINTERLAND PRODUCTIONS, 100 Harrison Street, San Francisco, California 94105-1605 (hereinafter "Licensor") and ____, (hereinafter "Licensee").

ARTIST: _____

LICENSED PROPERTY:

names, symbols, emblems, designs, service marks, trademarks, copyrights in graphic designs, logos, visual representations, and likenesses of Artist

LICENSED AREA:

world

LICENSED TERM:

2 years from initial on-sale date

LICENSED PRODUCTS:

embodying the Licensed Property

ROYALTIES:

Royalty Rate: _____%

Guaranteed Minimum Payment: $_____

Non-Returnable Advance Against Royalties: $_____

COPYRIGHT NOTICE: © 19__

TRADEMARK NOTICE:

as set out on Exhibit "A" hereto

INITIAL ON-SALE DATE:

LICENSOR PRICE FOR
LICENSED PRODUCT:

This agreement includes the terms and conditions on the pages attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first written above.

WINTERLAND PRODUCTIONS ("Licensor")	_____ ("Licensee")
By _____ Name: Michael L. Krassner Title: President	By _____ Name: Title:

TERMS AND CONDITIONS

1. *License.* Licensor hereby grants Licensee and Licensee hereby accepts the exclusive right to utilize the Licensed Property in connection with the manufacture, advertisement, distribution and sale of the Licensed Products in the Licensed Area during the Licensed Term. Notwithstanding the foregoing, Licensee shall have the exclusive right to artwork utilized on Licensed Products during the Licensed Term. All other rights with respect to the Licensed Property are expressly reserved by Licensor.

2. *Payment.*

   2.1. For the license granted herein, Licensee will pay Licensor the following:

      2.1.1. an advance of $_____.within five (5) business days following execution of this agreement;

      2.1.2. the balance of the guarantee set out on page 1 hereof payable concurrently with the fourth royalty statement furnished to Licensor during the last year of the Term;

      2.1.3. subject to the provisions of sub-paragraph 2.2 below, royalties at the rate(s) Set out on page 1 hereof. Royalty rate(s) shall be based on net sales of Licensed Products. As used in this sub-paragraph 2.1.3, "net sales" shall mean gross sales less returns, credits on returns and freight and trucking charges, and "wholesale selling pricer shall exclude sales tax, value-added tax

or the equivalent actually paid and freight and trucking charges.

2.2. Concurrently with each payment of royalties pursuant to sub-paragraph 2.1.3 above, Licensee shall furnish Licensor with a complete and accurate statement certified by an officer of Licensee showing the quantity and wholesale or average wholesale selling price of each of the Licensed Products shipped or delivered by Licensee during the preceding calendar quarter. Acceptance by Licensor of such payment and statement for any calendar quarter shall not, however, preclude Licensor from thereafter questioning the accuracy thereof. During the Licensed Term and for a period of one (1) year thereafter, Licensee will keep and maintain at its principal place of business true and accurate books of account and records of all transactions which relate to or affect this agreement or any provision thereof, which books and records together with supporting vouchers, shall be open for inspection by Licensor or its representative during regular business hours.

3. *Samples.* Licensee shall furnish samples of the Licensed Products, as well as the packaging therefor, to Licensor for its approval as to quality and style (which approval shall not be unreasonably withheld). In the event Licensor does not approve any of the same in whole or in part in writing within seven (7) days after receipt thereof, such failure shall automatically constitute disapproval by Licensor. Promptly after initial shipment of the Licensed Products, Licensee will so notify Licensor and supply Licensor with ten (10) samples of

such Licensed Products, at no cost to Licensor. Licensee shall have the right to utilize a minimum of three (3) artwork designs, and Licensor shall have the obligation to provide Licensee with updated artwork embodying the Licensed Property (including but not limited to a reasonable number of suitable photographs) within thirty (30) days of each album release by Artist and as reasonably requested by Licensee, all at Licensor's sole cost and expense.

4. *Licensed Products.* Licensee represents and warrants the Licensed Products will be of high standard in style, appearance and quality and that no liability will attach to Licensor for merchandise manufactured or purchased by Licensee but not sold:

5. *Labeling.* Licensee shall print, stamp, or mold the copyright and/or trademark notice designated by Licensor on all Licensed Products and on each package or container used in connection therewith and shall print such notice on each label, advertisement and promotional release concerning the Licensed Products, all in accordance with instructions from Licensor, including but not limited to instructions with respect to position and letter size.

6. *Infringement.* Licensor agrees to assist Licensee to the extent necessary in the procurement of any protection or to protect any of Licensee's rights to the Licensed Property and Licensee may, if it so desires, commence or prosecute any claims or suits in its own name or in the name of Licensor, or it may join Licensor as a party thereto. Each party shall provide the other with written notice of any infringements or imitations by others of the

Licensed Property on articles similar to those covered by this agreement which may come to its attention. In the event any sums are recovered as a result of any judgment or settlement from prosecution of any claim or suit, Licensor shall receive sixty percent (60%) of the amount recovered, after deduction of all related legal fees (from litigation only) incurred by Licensee, subject to other arrangements on a suit-by-suit basis. All settlements must be approved and signed by Licensor.

7. *Warranty and Indemnity.*

7.1. Licensor warrants and represents that it is free to enter into to and fully perform this agreement and that use of the Licensed Property hereunder will not infringe upon or violate any rights of any third party of any nature whatsoever. Licensor will at all times indemnify and hold Licensee and those with whom Licensee has contractual arrangements with respect to the Licensed Property harmless from and against any and all claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of any breach by Licensor of any representation, warranty, or agreement made by it herein. The above warranty shall apply only to judgments and settlements entered into with Licensor's written consent, which shall not be unreasonably withheld. As used in this paragraph, "Licensor" shall also include the officers, directors, partners, agents and employees of Licensor and any of its subsidiaries or affiliates.

7.2. Subject to sub-paragraph 7.1 above, Licensee will at all times indemnify and hold Licensor

harmless from and against any and all claims arising out of the use or possession of any Licensed Products manufactured, advertised, distributed, or sold herewith during the Licensed Term. Licensee will maintain throughout the Licensed Term an insurance policy for products liability in a form acceptable to Licensor.

8. *Expiration and Rights Subsequent Thereto.* Upon expiration of this agreement, all rights granted to Licensee herein shall forthwith revert to Licensor, with the following consequences:

   8.1. Licensor shall thereafter be free to use and license others to use the Licensed Property in connection with the manufacture, advertisement, distribution and sale of items identical or similar to the Licensed Products.

   8.2. Licensee shall not thereafter manufacture, advertise, distribute, or sell the Licensed Products in any place whatsoever; however, for a period of one hundred eighty (180) days, Licensee may continue to sell any Licensed Products previously manufactured and on, hand on a nonexclusive basis and in accordance with all the terms and conditions contained in this agreement, provided Licensor shall have the right to purchase such unsold merchandise from Licensee at cost in lieu of permitting Licensee to exercise its "sell-off" rights granted under this paragraph.

9. *General Clauses.*

   9.1. Nothing contained herein shall be construed to constitute a partnership or joint venture between the parties hereto, and neither Li-

censee nor Licensor shall become bound by any representation, act, or omission of the other.

9.2. This agreement and all matters or issues collateral thereto shall be governed by the laws of the State of California applicable to contracts performed entirely therein. The entire understanding between the parties hereto relating to the subject matter hereof is contained herein, and no warranties, representations, or undertakings are made by the parties hereto except as are expressly provided herein. This agreement cannot be changed or terminated orally.

9.3. If Licensor believes Licensee to be in default, Licensor shall provide Licensee with written notice thereof, and Licensee shall have fifteen (15) days within which to cure said default before Licensor may pursue other remedies.

9.4. Within ten (10) days of execution hereof, Licensor shall notify Licensee of any other existing licenses for the Licensed Products and/or heat transfers, including the following with respect to each license: licensor; duration of licensed term; licensed products; and licensed area.

(End of Terms and Conditions)

EXHIBIT B

AUTHENTIC HENDRIX, L.L.C.
83 South King Street
Seattle, Washington 98104

_____, 1996

[LICENSEE]

Re: Agreement dated _____ between James Hendrix and [Licensee]

Gentlemen:

Reference is hereby made to the agreement dated _____ between James Hendrix and [Licensee] (the "Agreement"). The undersigned, the successor-in-interest to the rights of James Hendrix pursuant to the Agreement, hereby directs you to pay all monies becoming due to the undersigned pursuant to the Agreement to Winterland Concessions Company as follows:

WINTERLAND CONCESSIONS COMPANY
100 HARRISON STREET
SAN FRANCISCO, CALIFORNIA 94108-1605
ATTENTION: _____

The payment directions set forth in this letter shall remain in place until you are notified to the contrary by us in writing.

Please acknowledge your agreement to the foregoing by returning a countersigned copy of this letter to the undersigned.

Very truly yours,

AUTHENTIC HENDRIX, L.L.C.

By: _____

AGREED AND ACCEPTED:

By: _____
[LICENSEE]

75

(2)

No. 07-568

FILED
NOV 2 8 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

EXPERIENCE HENDRIX, LLC, et al.,
Petitioners,

v.

THE JAMES MARSHALL HENDRIX FOUNDATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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Counsel of Record
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Counsel for Respondent

November 28, 2007

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QUESTION PRESENTED

Are there compelling reasons for this Court to grant review of the Ninth Circuit's decision when there is no direct conflict with a decision of this Court or a federal court of appeals, no departure from the accepted and usual course of judicial proceedings, and the principal basis for Petitioners' challenge to the Ninth Circuit's decision is the alleged misapplication of Washington State law?

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16B Charles Alan Wright et al., *Federal Practice and Procedure* § 4004.1 (2d ed. 1987) 7

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Restatement (Second) Conflict of Laws § 6(2) (1971), comment c 15

INTRODUCTION

In arguing that this Court should grant their Petition for a Writ of Certiorari, Petitioners Experience Hendrix, L.L.C. and Authentic Hendrix, LLC ("Petitioners") make only a token attempt to comply with this Court's rules governing review of lower court decisions. Specifically, Petitioners claim that the Ninth Circuit disregarded Washington State choice of law rules in contravention of settled law under the decisions of this Court and other federal circuit courts. (Pet. 16.) Petitioners further contend that the Ninth Circuit's alleged erroneous decision interpreting the jurisdictional reach of the Washington Personality Rights Act ("WPRA")[1] represents a "clear departure" from the accepted and usual course of judicial proceedings. (Pet. 17.)

Upon closer examination, Petitioners' challenges to the Ninth Circuit's decision amount to nothing more than claims that the court misapplied a properly stated rule of state law to the facts in this case. Under the rules of this Court and clear precedent construing those rules, Petitioners' asserted grounds for review fail to meet the high threshold for granting a petition. The circumstances under which review may be granted have by necessity been narrowly drawn given the manifest impossibility of reviewing every case in which the lower court is alleged to have been wrong.

In implicit recognition of their inability to present compelling reasons for review, Petitioners devote the

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[1] Wash. Rev. Code § 63.60.010 *et seq.* (2005).

majority of their petition to an argument on the merits of their claims. While not relevant to this Court's decision on a writ for certiorari, Petitioners' characterization of the Ninth Circuit's choice of law ruling is not accurate. The Ninth Circuit did not, as Petitioners contend, disregard Washington State choice of law rules. To the contrary, the circuit court expressly referenced and applied those rules in reaching its decision. By comparison, Petitioners' suggested expansive reading of the statutory language at issue does not have any basis in Washington State jurisprudence and should be rejected.

STATEMENT OF THE CASE

James Marshall Hendrix ("Jimi") was a famous rock guitarist who died intestate in London, England in 1970. (Pet. App. 2a.) At the time of his death, Jimi was domiciled in New York, and his estate was probated in that state. (Pet. App. 2a.) Jimi's father, James A. Hendrix ("Al"), was Jimi's sole legal heir under New York law. (Pet. App. 2a.) Al assigned all of his rights personally and as sole heir to Jimi's estate to Petitioners. (Pet. App. 2a.) Petitioners claim that the assignment from Al included Jimi's publicity rights, which allegedly consist of the rights to Jimi's name, likeness, image, photographs, and signature. (Pet. App. 2a.)[2]

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[2] New York law refers to a "right of publicity." The WPRA refers to personality rights. *See* Wash. Rev. Code § 63.60.030. Both refer to the same set of rights. Respondent will refer to both sets of rights as "publicity rights."

In 1995, Al sued his lawyer, Leo Branton, Jr., in the Federal District Court for the Western District of Washington ("District Court") in the case styled *James A. Hendrix v. Leo Branton, Jr., et al.*, No. C93-537Z (W.D. Wash. 1995). (Pet. App. 4a.) The *Branton* case concerned intellectual property rights in Jimi's musical works and the right of publicity. (Pet. App. 4a.) After conducting a thorough conflict of laws analysis, the District Court concluded that New York law governed whether Jimi had a right of publicity at the time of his death, and whether that right, if it existed, descended to Al. (Pet. App. 4a.) The court reached this conclusion on the basis of the general rule followed in Washington State that the law of the state where a decedent is domiciled at death governs whether a property right exists and descends ("domicile rule"). (Pet. App. 5a.)

Although deciding the choice of law issue, the *Branton* court deferred a final ruling on (1) whether, under New York law, the claimed right of publicity existed, and (2) if a publicity right existed, which state's law would govern the infringement claim. (Pet. App. 5a.) The case ultimately settled before trial, and the issue of whether a right of publicity existed and descended under New York law in 1970 was never decided. (Pet. App. 5a.)

In November 2003, Petitioners filed this action against Respondent The James Marshall Hendrix Foundation ("Respondent") in the District Court. (Pet. App. 15a.) Respondent is a non-profit organization founded by Leon Hendrix, Jimi's brother. (Pet. App. 14a.) Respondent's mission is to help the disadvantaged in the inner city, to improve the

environment, and to promote peace. (Pet. App. 2a.) After discovering that Respondent was promoting a charitable event, Petitioners filed this lawsuit against Respondent claiming, among other things, that the use of Jimi's publicity rights violated the WPRA. (Pet. App. 3a & 14a.)

Respondent moved for summary judgment seeking dismissal of the WPRA claim on the ground that Petitioners did not have a claim for infringement of Jimi's right of publicity because, under New York law, no such right survived Jimi's death and descended to Al. Noting that it was being asked to decide the identical choice of law issue raised in the *Branton* case, the District Court again concluded, based on the domicile rule, that "New York law governs whether a right of publicity descended to Al Hendrix." (Pet. App. 5a.) Agreeing with Respondent, the District Court held that New York law did not recognize the existence of post-mortem publicity rights. (Pet. App. 9a.)

Applying Washington State choice of law rules, the District Court further concluded that the WPRA did not apply because (1) the WPRA is not a statutory directive as to choice of law in a publicity rights case, (2) "Washington does not have such a dominant interest . . . that the Court should ignore traditional choice of law principles," and (3) New York has the "most significant relationship" to whether publicity rights existed and descended following the death of a domiciliary of that state. (Pet. App. 10a.) Accordingly, the District Court dismissed Petitioners' WPRA claim. (Pet. App. 11a.)

Petitioners dismissed their remaining claims before the District Court (Pet. App. 34a-35a), and the District Court awarded Respondent's attorney's fees and costs (Pet. App. 28a). Petitioners then appealed the District Court's dismissal of the WPRA claim to the Ninth Circuit Court of Appeals. (Pet. App. 59a-62a.)

The Ninth Circuit issued a memorandum opinion on June 18, 2007 affirming the District Court. (Pet. App. 29a-31a.) In its opinion, the Ninth Circuit held that application of Washington State choice of law principles, including the domicile rule and the "most significant relationship" test, required application of New York law. (Pet. App. 30a.) The Ninth Circuit also found that Respondent was entitled to attorney's fees incurred on appeal. (Pet. App. 32a-33a.)

Following denial of their Petition for Rehearing En Banc (Memorandum Opinion of June 18, 2007), Petitioners filed the subject Petition for a Writ of Certiorari with this Court on October 25, 2007. (Pet. App. 40a.)

REASONS FOR DENYING THE PETITION

I. There Are Not Any Compelling Reasons for Granting the Petition.

United States Supreme Court Rule 10 clearly provides that review is a matter of judicial discretion and will be granted only for "compelling reasons."[3] The rule then elucidates the circumstances under

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[3] *See* Sup. Ct. R. 10.

which the Court will potentially find this standard to be satisfied, including any decision that directly conflicts with the decision of another circuit court or this Court, is so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory powers, or implicates an important question of federal law that should be settled by this Court.[4] Significantly, Rule 10 concludes with the statement that "*review is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.*"[5]

In addition to applying these general standards, this Court has further restricted the permissible scope of review when the basis is a federal circuit court's allegedly improper determination of state law. Writing for a unanimous court in *Haring v. Prosise*, Justice Marshall highlighted this important limitation on Supreme Court review:

> It is our practice to accept a reasonable construction of state law by the Court of Appeals "even if an examination of the state-law issue without such guidance might have justified a different conclusion." *Bishop v. Wood*, 426 U.S. 341, 346, 96 S.Ct. 2074, 2078, 48 L.Ed.2d 684 (1976) . . . "*We emphasize . . . that, standing alone, a challenge to state-law determinations by the Court of Appeals will*

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[4] *Id.*

[5] *Id.* (emphasis added).

rarely constitute an appropriate subject of this Court's review."[6]

Consistent with this principle, Supreme Court review of a federal circuit court's interpretation and application of state law is reserved for extraordinary cases involving issues with likely widespread, general public impact.[7] Review should, therefore, be granted only "in cases involving principles the settlement of which is of importance to the public as distinguished from the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal."[8]

Petitioners' specific challenges to the Ninth Circuit's choice of law ruling fail to satisfy any of these standards. Upon closer inspection, Petitioners' argument is that the Ninth Circuit allegedly misapplied Washington State choice of law rules to the particular facts at issue. This argument does not present a proper basis for review under Rule 10 and is directly counter to the deference this Court has

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[6] *Haring v. Prosise*, 462 U.S. 306, 314 n.8 (1983) (emphasis added); *see also Stenberg v. Carhart*, 530 U.S. 914, 917 (2000) (holding that "this Court normally follows lower federal-court interpretations of state law . . . and rarely reviews such an interpretation that is agreed upon by the two lower federal courts").

[7] *See* 16B Charles Alan Wright et al., *Federal Practice and Procedure* § 4004.1, at 27 (2d ed. 1987).

[8] *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 392-93 (1923).

accorded to federal courts of appeals' determinations of state law. Petitioners attempt to clothe their objections to the Ninth Circuit's application of Washington State choice of law rules to the WPRA in the guise of a "conflict" with federal circuit court and Supreme Court precedent. (Pet. 16-17.) But plainly, no such "conflict" exists.

Despite claiming the existence of a reviewable conflict, Petitioners utterly fail to demonstrate a "clear departure from long-settled choice of law principles" in conflict with decisions of other federal circuit courts or this Court. (Pet. 17.) Petitioners have not cited any court of appeals or Supreme Court opinions that have reached an interpretation of a similarly worded statute, on the basis of the same or similar choice of law rules followed in Washington State, that is contrary to the Ninth Circuit's construction of the WPRA. Instead, Petitioners have presented this Court with a false conflict. Petitioners only assert that the Ninth Circuit's purported misapplication of Washington State choice of law rules (by allegedly not fully considering all of the available evidence of legislative intent) amounts to a total disregard of its obligation to follow forum law. Accordingly, Petitioners' assertion does not describe an actual "conflict," much less the kind of reviewable "conflict" contemplated by this Court's rules.[9]

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[9] Supreme Court review should be limited to direct and substantial conflicts among the federal circuit courts on the same issue. *See Allapattah Services, Inc. v. Exxon Corp.*, 362 F.3d 739, 747 (11th Cir. 2004) ("Because a majority of the federal circuit courts of appeals have addressed this question and failed to come to a consensus -- indeed, they have reached diametrically opposing

Petitioners further claim that the manner in which the Ninth Circuit interpreted the WPRA represents a departure from the accepted and usual course of judicial proceedings. (Pet. 17-18.) As discussed below, Respondent strongly disagrees with Petitioners' characterization of the Ninth Circuit's decision. Again, however, even assuming that the Ninth Circuit misapplied Restatement (Second) Conflict of Laws ("Restatement") section 6(1) (1971) by not looking for evidence of legislative intent in the language of the WPRA itself, such an error would only amount to, at worst, a misapplication of Washington State law to the particular facts at issue in this case. The Supreme Court does not grant review merely to review evidence or inferences that a petitioner suggests should be drawn from that evidence.[10]

Granting review would also run directly counter to this Court's repeated pronouncement that a federal circuit court's interpretation of state law, absent extraordinary circumstances, is rarely reviewed by the Court. Such extraordinary circumstances are conspicuously absent here. Instead, Petitioners seek the resolution of issues that have importance only to the parties, namely whether Jimi's right to publicity

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views on the issue – the Supreme Court should exercise its certiorari jurisdiction to resolve this circuit split.").

[10] *See N.L.R.B. v. Pittsburgh S.S. Co.*, 340 U.S. 498, 503 (1951) ("This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way.").

survived his death and inured to Petitioners' commercial benefit.

Petitioners have not met their burden of showing compelling reasons for granting review of the Ninth Circuit's decision. On this ground alone, Petitioners' request for a writ of certiorari should be denied.

II. The Ninth Circuit Properly Applied Washington State's Choice of Law Rules.

A long standing principle informing this Court's jurisprudence on petitions for certiorari is that the disposition of the petition does not reflect a view concerning the merits of the petitioner's claim.[11] The corollary of this principle is that the Court's focus should be on whether the question(s) presented raise compelling reasons for review, not whether there is any merit to a petitioner's claims. Notwithstanding this fundamental aspect of certiorari, Respondent submits that Petitioners have not shown that there is any merit to their specific challenges to the Ninth Circuit's interpretation and application of Washington State law.

A. The Ninth Circuit Did Not Substitute California Choice of Law Rules for Those of Washington State.

Petitioners first contend that the Ninth Circuit incorrectly applied California choice of law rules in place of those followed by Washington State courts.

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[11] *See, e.g., Bridgers v. Texas*, 532 U.S. 1034 (2001).

(Pet. 14.) To the contrary, the Ninth Circuit explicitly referenced and followed the "most significant relationship" test, as set forth in Restatement sections 6(1) and 6(2), and the domicile rule derived from Restatement section 260,[12] in affirming the District Court's determination that New York law applied. Both of these concepts inform choice of law determinations under Washington State law.

The Ninth Circuit's citation to *Cairns v. Franklin Mint Co.*[13] did not amount to a substitution of California choice of law rules for those of Washington State. Rather, that analogous decision provided reasonable guidance concerning the interpretation of a publicity rights statute that was similarly worded to the WPRA in a case involving similar claims. The Ninth Circuit's citation to *Cairns* is particularly apt given the absence of any reported Washington authority interpreting the jurisdictional reach of the WPRA or the effect, if any, of general language similar to that employed in the WPRA upon the statute's range of application.

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[12] Under the domicile rule, Washington State courts apply the law of the decedent's state of domicile at the time of death to determine whether the right to intangible personal property exists and descends. *See Joplin Enter. v. Allen*, 795 F. Supp. 349, 350 (W.D. Wash. 1992); *In re Grady's Estate*, 483 P.2d 114, 115 (Wash. 1971). Jimi was domiciled in New York State at the time of his death in 1970. Accordingly, the Ninth Circuit correctly concluded that New York State law at the time of Jimi's death in 1970 governs whether Jimi had a right of publicity, and whether that right, if it existed, descended to his father Al.

[13] 292 F.3d 1139 (9th Cir. 2002).

Notably, relying upon a plain meaning analysis similar to that followed in Washington State, the *Cairns* court held that the California publicity rights statute did not preempt California's domicile rule, which is simply a codification of the general rule recognized under Washington State law. Thus, the Ninth Circuit reasonably relied upon *Cairns* in connection with its determination that the WPRA is not a statutory directive under Washington State law and that it was, therefore, necessary to apply the Restatement section 6(2) factors and the domicile rule.

B. The WPRA Does Not Contain a Statutory Directive to Apply Washington State Law.

Petitioners' second, related contention is that the Ninth Circuit erred in finding that the WPRA was not a statutory directive within the contemplation of Restatement section 6(1). In particular, Petitioners find this "directive" amidst the general language of Washington Revised Code ("RCW") section 63.60.030(1). (Pet. 15.) This section of the WPRA provides, in relevant part:

> (1) *Every individual or personality*, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer, and shall not expire upon the death of the individual or personality, as the case may be, so protected but shall pass:

> (a) Under the deceased individual's or personality's, as the case may be, last will and testament or, if none, then under the laws of intestate succession applicable to interests in intangible personal property of the individual's or personality's, as the case may be, domicile.[14]

Petitioners' primary argument is that the general language "every individual or personality" demonstrates a legislative intent to apply the WPRA to individuals domiciled outside Washington State. The effect of this extraterritorial application of the WPRA is the recognition of a post-mortem publicity right irrespective of whether the decedent's domicile acknowledges the existence of such a right. (Pet. 11.) Petitioners' strained construction of RCW section 63.60.030(1) is not in accord with Washington State law or with cases in other jurisdictions considering the effect of such general, prefatory statutory language on a choice of law analysis under the Restatement.

As support for their position that this general statutory pronouncement is evidence of a statutory directive, Petitioners rely on *In re Marriage of Abel*.[15] Although finding a statutory directive in the language of a Washington child support statute, the *Marriage of Abel* case is distinguishable on several grounds. First, the language at issue was an affirmative command to the court that the "child support schedule *shall* be

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[14] Wash. Rev. Code § 63.60.030(1) (2005) (emphasis added).

[15] 886 P.2d 1139, 1141 (Wash. Ct. App. 1995).

applied" in all child support proceedings.[16] This affirmative statement stands in stark contrast to the general, prefatory language, "every individual or personality," used in RCW section 63.60.030(1).[17] Second, that case involved a statutory scheme with a strong basis in Washington State public policy, as reflected in the broad statement of purpose in the statute itself.[18] There is no evidence of any remotely comparable public policy surrounding enactment of the WPRA. Finally, *Marriage of Abel* concerned a former Washington State resident who filed a child support action in Washington State against a Washington State resident. By contrast, there is no such connection here between Washington State and the nonresident (Jimi) whom Petitioners seek to bring within the jurisdictional reach of the WPRA.

Petitioners further contend that the *Marriage of Abel* decision supports a finding that "Washington

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[16] *Id.* (emphasis in original).

[17] Petitioners have also failed to show that even the use of the word "shall" always signals the presence of a statutory directive. Indeed, while the *Marriage of Abel* court assigned relevance to this word under the specific statute at issue, no other reported Washington decisions have found a statutory directive based on such language despite the existence of countless Washington statutes employing the word "shall."

[18] "The overriding purpose of the child support schedule is to insure that children are protected with adequate, equitable and predictable child support." Wash. Rev. Code § 26.19.001 (2005). As a result, the child support statute enjoys liberal construction to fulfill this overall purpose. *See, e.g., In re Marriage of Oakes*, 861 P.2d 1065, 1067 (Wash. Ct. App. 1993).

follows the analysis set out in comment b [to Restatement section 6(1)]" and that, pursuant to comment b, a statutory directive supercedes other choice of law rules like the domicile rule under Restatement section 260. (Pet. 10.) *Marriage of Abel*, however, neither referenced comment b nor even explicitly addressed the form of analysis a Washington State court should follow in deciding whether there is a statutory directive when the statute is silent as to its range of application. Additionally, no reported Washington State cases have held that a statutory directive supercedes otherwise applicable choice of law rules.

Petitioners' single-minded focus on comment b also ignores comment c to Restatement section 6(2): "Legislatures usually legislate . . . only with the local situation in mind. They rarely give a thought to the extent to which the laws they enact . . . should apply to out-of-state facts."[19] Comment c is in accord with the general presumption against interpreting a statute to have extraterritorial effect.[20] This presumption has been found to be especially strong where, as here, a party argues for the existence of a statutory directive on the basis of general, prefatory language in a statute (*e.g.* "every person" or "every decedent").[21] To find

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[19] Restatement § 6(2), comment c.

[20] *See, e.g., Sandberg v. McDonald*, 248 U.S. 185, 195 (1918) ("[L]egislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction.").

[21] See *Dale v. Ala Acquisitions I, Inc.*, 434 F. Supp. 2d 423, 432 (S.D. Miss. 2006) (holding that "generic, prefatory language

otherwise would impermissibly give a statute like the WPRA extraterritorial effect by implication. Furthermore, such a reading would preclude the application of the Restatement section 6(2) whenever a statute contained general language that could potentially be interpreted as applying to out-of-state facts. This result could not have been intended by comment b's authors in stating that "the intentions of the statute can *sometimes* be ascertained" from the text of the statute.[22]

The intent of the architects of Restatement 6(1) is actually at odds with Petitioners' proffered expansive interpretation of what constitutes a state statutory directive on choice of law. It was Elliot Cheatham and Willis Reese who first suggested, in 1952, that conflicts questions be resolved through comparative interest balancing, with preference given to the law of the state with the dominant interest.[23] In a widely cited, authoritative law review article published before the Restatement, these two authors expressed their concerns regarding the extraterritorial application of state statutes:

> There is one rule or policy which, wherever applicable, takes precedence over others and, to

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such as ['in any civil action'] is not considered sufficient to establish a 'statutory directive' on choice of law").

[22] *See* Restatement § 6(1), comment b (emphasis added).

[23] William S. Dodge, *Extraterritoriality and Conflict-Of-Laws Theory: An Argument for Judicial Unilateralism*, 39 Harv. Int'l L.J. 101, 119-20 (1998).

> a large extent, saves the courts from further pain of decision. That controlling policy, obvious as it may be, is that a court must follow the dictates of its own legislature to the extent that these are constitutional. But, although choice of law constitutes no exception to this fundamental rule, rarely can the principle be applied in practice. *The vast run of statutes are enacted with only the intrastate situation in mind. The application of a statute to out-of-state occurrences, therefore, must generally be determined in accordance with ordinary conflict of laws rules. And this is so even if, as is frequently the case, the statute employs such sweeping terms as "every contract" or "every decedent." Unless it appears that the draftsmen so intended, language of this sort is not to be taken literally to mean that the statute is applicable to every transaction wherever occurring or to every case brought in the forum.* Where, on the other hand, it is clear that the legislature has actually addressed itself to the choice of law problem, the courts, subject to the limitation of constitutionality, must give effect to its intentions.[24]

This passage highlights a strong presumption favoring application of ordinary conflict of laws principles (*e.g.* Restatement section 260) in the absence of a clearly expressed state legislative intent

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[24] *Lauritzen v. Larsen*, 345 U.S. 571, 579 n.7 (1953) (quoting Elliott E. Cheatham & Willis L.M. Reese, *Choice of the Applicable Law*, 52 Colum. L. Rev. 959, 961 (1952)) (emphasis added).

to the contrary. Petitioners have failed to show such a clear intent in the general language of the WPRA.

Petitioners' argument also runs afoul of both common sense and the well-settled statutory construction principle followed in Washington State that, in undertaking a plain language analysis, a court must remain careful to avoid "unlikely, absurd, or strained" results.[25] Nonetheless, these are precisely the results Petitioners seek by extrapolating from the use of "every individual or personality" in RCW section 63.60.030(1) an implied legislative intent to abrogate the domicile rule and create international legislation *applicable to every person in the world irrespective of any relevant contact with Washington State.*

In their quest to promote an expansive, extraterritorial application of the WPRA, Petitioners advance an unconstitutional construction of the statute. A statute must be construed to avoid not only the conclusion that it is unconstitutional but also grave doubts that it may be unconstitutional.[26] Significantly, Restatement 6(1) prohibits the extraterritorial application of a state statute, even when intended by the state legislature, where, as here, such application is not constitutionally permissible.[27]

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[25] *Qwest Corp. v. Washington Utilities and Transp. Com'n*, 166 P.3d 732, 735 (Wash. Ct. App. 2007).

[26] *Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998).

[27] *See* Restatement § 6(1), comment b.

Petitioners' proposed construction of the WPRA to apply to *all* out-of-state decedent domiciliaries violates the Full Faith and Credit Clause of the United States Constitution. The Faith and Credit Clause applies to matters between states and to matters between a state and the federal government.[28] No single state can usurp Congress's role and impose its own policy choice on neighboring states.[29] State intellectual property laws may stand only so long as they do not prejudice the interests of other states.[30]

Petitioners' interpretation of the WPRA clearly prejudices the interests of New York State by failing to recognize New York Civil Rights Law sections 50 and 51 and the New York State courts' interpretation of these statutes to preclude post-mortem publicity rights. If New York does not wish to recognize a descendible right of publicity in its decedent domiciliaries, a state with little or no contact with Jimi at the time of Jimi's death, like Washington State, cannot legislatively impose such a right without raising insurmountable constitutional concerns.

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[28] *See, e.g., Sun Oil Co. v. Wortman*, 486 U.S. 717, 722-724 (1988) (between states); *see also, Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984) (between a state and the federal government).

[29] *See BMW of North America, Inc. v. Gore*, 517 U.S. 559, 571 (1996) (commenting that it is clear that no state could "impose its own policy choice on neighboring states").

[30] *See Goldstein v. California*, 412 U.S. 546, 558 (1973) (construing the Dormant Copyright Clause).

Petitioners' construction of the WPRA to apply to *all* out-of-state decedent domiciliaries also violates the Due Process Clause. The restrictions mandated by the Due Process Clause require that for a state's substantive law to be selected in a constitutionally permissible manner, that state must have significant contact or a significant aggregation of contacts, creating sufficient state interests that the choice of its law is neither arbitrary nor fundamentally unfair.[31] As held by the District Court and affirmed by the Ninth Circuit, New York State "clearly has the greater interest in what property rights it chooses to recognize in its domiciliaries." (Pet. App. 10a.) Washington State has no remotely comparable interest and had no significant contact with Jimi at the time of his death. Application of the WPRA to Jimi would, therefore, be arbitrary, fundamentally unfair, and unconstitutional.

CONCLUSION

Petitioners have failed to demonstrate any compelling reasons for this Court to grant their petition for review. The essence of Petitioners' challenge to the Ninth Circuit's choice of law ruling is that the circuit court misapplied Washington State law. Even assuming the truth of this allegation, it does not represent a sufficient basis for review under Supreme Court Rule 10 or this Court's precedent. Additionally, where, as here, there are not any extraordinary circumstances potentially justifying review, the Ninth Circuit's interpretation and construction of state law should be accorded great

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[31] *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-313 (1981).

deference. Respondent, therefore, respectfully requests that this Court deny Petitioners' request for review.

Respectfully Submitted,

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